S. HRG. 98-1137, PT. 1

CIVIL RIGHTS ACT OF 1984

JOINT HEARING

BEFORE THE

SUBCOMMITTEE ON
EDUCATION, ARTS AND HUMANITIES

AND THE

SUBCOMMITTEE ON THE HANDICAPPED

OF THE

COMMITTEE ON
LABOR AND HUMAN RESOURCES
UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

SECOND SESSION

ON

S. 2568

TO CLARIFY THE APPLICATION OF TITLE IX OF THE EDUCATION AMENDMENTS OF 1972, SECTION 504 OF THE REHABILITATION ACT OF 1973, THE AGE DISCRIMINATION ACT OF 1975, AND TITLE IV OF THE CIVIL RIGHTS ACT OF 1964

MAY 24, 1984

PART 1

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THE CIVIL RIGHTS ACT OF 1984

THURSDAY, MAY 24, 1984

U.S. SENATE, SUBCOMMITTEE ON EDUCATION, ARTS AND HUMANITIES, AND SUBCOMMITTEE ON THE HANDICAPPED OF THE COMMITTEE ON LABOR AND HUMAN RESOURCES,

Washington, DC.

The subcommittees met, pursuant to notice, at 10 a.m., in room SD-430, Dirksen Senate Office Building, Senator Robert T. Stafford (chairman of the Subcommittee on Education, Arts and Humanities) presiding.

Present: Senators Stafford, Pell, Hatch, Kennedy, Denton, Weicker, and Nickles.

OPENING STATEMENT BY SENATOR STAFFORD

Senator STAFFORD. Good morning. The Subcommittee on Education, Arts and Humanities will please come to order.

The Subcommittee on Education, Arts and Humanities and the Subcommittee on the Handicapped are jointly holding a hearing this morning on S. 2568, the Civil Rights Act of 1984. This important legislation, which presently has 63 cosponsors in the Senate, was introduced on April 12 of this year. As my colleagues know, the impetus for S. 2568 was the decision of the Supreme Court in *Grove City* v. *Bell*, which contravened, in our judgment, the intent of Congress for title IX of the Education Amendments of 1972.

As the chairman of the Senate Education Subcommittee which has jurisdiction over all Federal education laws for the Senate, and as a member of this subcommittee since 1971, I have watched closely the effect of title IX on our Nation's schools.

After observing an initial difficult period in which the meaning of title IX was sorted out by school administrators, students and parents, I can state that it has been a number of years since this Senator has received or heard complaints about this particular law.

In fact, increasingly I have heard from girls and women, and particularly from the parents of young girls, who are thrilled at the opportunities title IX has opened up for them in many areas.

Because of title IX educational institutions at the elementary, secondary, and post-secondary level have come to accept that girls and women should have equal access to a quality education in the classroom or on the playing field. As a taxpayer and the father of four daughters, there is no one in the country who is more delighted with these developments than am I.

There are many members here today who feel very strongly about this issue, and I am going to limit my opening remarks in order that everyone can have an opportunity to speak. However, I

also want to make one point about section 504 of the Rehabilitation Act of 1973.

This important law had a dramatic impact on the lives of many handicapped individuals. Today, the disabled have entered the mainstream of American life because they have the force of law behind them.

We should never forget that section 504 and title IX were enacted to correct the very real discrimination which took place in institutions receiving Federal funds. The impact of these two laws has not been in the number of court cases which have been brought to correct discriminatory practices, even though this number is actually quite limited.

The Federal Government in title IX and section 504 put the Nation on notice that discrimination will not be tolerated, and as a result the situation facing the handicapped and women has improved dramatically in just 10 short years.

Conditions are still not perfect, and that is why we need to pass S. 2568 during this Congress. However, we have taken giant leaps forward as the result of title IX and section 504 and I hope we can continue that progress in the next few weeks.

I am delighted that Senator Pell, who has for many years chaired this subcommittee, and with whom I have shared the responsibility through the years, is here.

Senator Pell, do you have an opening statement?

Senator PELL. Thank you very much, Mr. Chairman. I do, and I would like to thank you and the Senator from Connecticut and the other members of our subcommittee for convening this hearing to really consider the most important civil rights legislation introduced this session.

For 14 years, Congress and each administration have agreed that title IX of the Higher Education Act, title VI of the Civil Rights Act, and section 404 of the Rehabilitation Act, and the Age Discrimination in Employment Act prohibit discrimination on the basis of sex and race and national origin, handicapping condition, or age, by an institution if that institution or any part of that institution receives Federal funds.

Now, in its recent decision in *Grove City* v. *Bell,* the Supreme Court, breaking away from the clear interpretation of these laws, has determined these statutes apply only to the specific program or activity receiving Federal funds.

The impact of the Court's ruling is to find that institutions may discriminate on the basis of sex in any program or activity not receiving Federal funds, and the prohibition against discrimination applies only if the particular program or activity receives Federal funds.

This narrow, narrow interpretation is not only inconsistent with stated congressional intent, but will result in closing out those opportunities only recently opened by the enactment of the civil rights laws.

For these reasons, I am in sharp disagreement with the Supreme Court's ruling in *Grove City,* and was the floor manager of the bill creating title IX in 1972 and chairman of the conference committee. I advocated strongly then the institutionwide interpretation of

title IX, and it was with that intent that title IX was enacted into law.

A great deal of progress has been made over the last few years as a result of the civil rights laws enacted by Congress. Many opportunities that had been closed to women and minorities have been opened as a result of the passage of laws like title IX.

For these reasons, I have cosponsored the Civil Rights Act of 1984, and this legislation that we are concerned with today is necessary to make clear Congress' intent to prohibit institutions receiving Federal funds from discriminating on the basis of sex, age, race, national origin, or handicapping condition.

As a nation, we must strive to end illegal discrimination and continue to open opportunities for all our citizens. I thank very much the chairman of our subcommittee for convening this hearing. We have worked together in partnership on this and so many problems for many years. I look forward to our continuing to do so.

Senator STAFFORD. So do I. Thank you very much, Senator Pell.

The subcommittee is honored that the chairman and ranking member of the full committee are here, Senator Hatch and Senator Kennedy. But with their indulgence, we would like to break here temporarily and allow Senator Hatfield, who has a severe time problem, to testify at this point.

The fact that Senator Hatfield and I were once contemporaneous Governors and that he is chairman of the Appropriations Committee has nothing to do with the opportunity for him to go ahead.

Senator Hatfield?

STATEMENT OF HON. MARK O. HATFIELD, A U.S. SENATOR FROM THE STATE OF OREGON

Senator HATFIELD. Mr. Chairman, I want to thank you and the members for indulging me at this point. I have an Oregon wilderness bill that is pending on the floor in about 10 minutes and I am sort of crushed in between schedule requirements at this point.

Mr. Chairman, I would like to take a brief moment of your time today to outline a point or two that I feel very strongly about, and I first want to acknowledge your long-time role, both as a fellow Governor some 25 years ago in the area of maintaining and safeguarding our commitment to the role of education as a pivotal role in our pluralistic society, and for the 24 years that you have been in the Congress—12 years in the House and 12 years in the Senate.

Mr. Chairman, when the *Grove City College* case was announced by the Supreme Court, a wave of protest swept through the halls of Congress—protest because the Court's decision was predicated upon an interpretation of congressional intent, and I, along with many others, realized that there had to be a remedy for a misinterpretation of the congressional handiwork, as represented by the Civil Rights Act now of 1984.

That was primarily because of the Court's holding that a program-specific was all that was necessary to meet the antidiscrimination requirements in title IX. We also recognize that if that is permitted to stand that that would portend doom in effective enforcement of antidiscrimination laws. That is why I am a cosponsor of S. 2568.

Mr. Chairman, I would, though, like to point out that I think that there is certain illogic to the Court's ruling because it is ludicrous to suggest that a college could successfully receive Federal aid or Federal assistance in the science department and therefore be under an antidiscrimination protection of title IX, and yet be free to blatantly discriminate in its hiring practices in other departments within the university.

I think we also have to recognize that it goes beyond just the program specifics. What has happened in the athletic departments in the universities and colleges? Since the enactment of title IX, we have found that for many years prior the women's athletic programs were fed crumbs while men's programs feasted on mouthwatering portions of money.

But in the wake of title IX and its passage, those inequities in funding slowly began to change, and today women's athletic programs are better funded than ever before and we see greater athletic opportunities for women in our colleges and universities.

Yet, colleges and universities never received Federal assistance for their athletic programs. But this change in the athletic programs not federally funded came as a result of the general understanding and the general administration of title IX.

I believe unless we do something, it is an open invitation to colleges to engage in discrimination in those segments of the university that do not receive Federal aid. I do think, though, that there is another point that relates to this issue that I want to bring up, and I do so as a long-time civil rights advocate. And as a liberal Republican, I feel very strongly that we must maintain our commitments to the rights of people, and also to the fact that there must be something done from the standpoint of permitting the Government to continually intrude in the segments of our lives leading to big brother government in an Orwellian era.

I am deeply concerned about the centralization of political and economic power in our Nation today, and that brings the question of tracking the Federal dollar. This is one of those all-purpose instruments of intervention, and yet I think it has ominous implications.

For the first 14 pages of *Grove City College*, this was the issue—tracking the Federal dollar. The question was whether Federal aid to the student constituted Federal aid to the college.

Basing its decision on "clear statutory language, powerful evidence of congressional intent, and a longstanding and coherent administrative construction of the phrase 'received financial assistance,' " the Court held that a Federal loan to a student constituted aid to Grove City College.

Now, I think that if we wanted to look at this realistically, title IX would be of limited use if applied only to those colleges which receive direct financial aid, and therefore the inclusion of indirect Federal aid in the definition of financial assistance is necessary, absolutely necessary, to ensure that title IX's provisions have their intended broad impact.

But nevertheless, I believe this committee and the Congress would serve the interests of this country well by examining the issues of how far the Federal Government should go in tracking the billions of dollars it appropriates.

The Court does not say how indirect aid can become before it is no longer tracked, but we must ask ourselves that very question. How far are we going to go in tracking Federal dollars?

There is a Chinese proverb which reads, "fishes see the worm, not the hook." In our enthusiasm to eradicate discrimination, and we are dedicated to this cause, we need to be mindful of the means we employ, and if those means involve a continued expansion of the Federal Government's power and presence in our lives, let us beware that we are moving toward "big brother" government.

No one doubts that this Nation's progress in civil rights issues can be attributed in large part to the role of the Federal Government. What I am saying is simply this: Congress had better exercise extreme caution and care when it permits the Federal Government to track the dollars it appropriates and to force recipients of those dollars to implement a Federal policy.

I think the fact is today, that the 10th amendment is being starved to death while the Federal Government fattens itself on gluttonous portions of jurisdiction and power. Colleges have a duty not to discriminate and the Federal Government has a duty to make sure that those Federal dollars are not used to perpetuate discriminatory educational systems. But when colleges are ordered to further Federal policies unrelated to the educational process, then we have a problem.

To the point, the fact that colleges and universities are required by law to serve as the "foot soldiers" of the Selective Service System poses a menace to our civil rights and liberties. This law, in my view, is intolerable and it came about because of the practice of tracking the Federal dollar.

Make no mistake about it, the Federal Government has a method of operation. Step one: Give the college assistance with no strings attached. Step two: Allow the college to become dependent upon that assistance for its very existence. And then, step three: Blackmail the college; threaten to take away the money if the college does not submit to whatever the Federal Government asks.

This is the modus operandi of the Federal Government. That is why colleges and universities now are being forced to carry out the Nation's draft laws. The Government says, "Do what we tell you to do or we might take away your money," and so the colleges and universities are forced into reluctant compliance, and that is one of the reasons the cases of the *Selective Service System* v. *Minnesota Public Interest Group* and versus *Bradley Boe* are pending in the Supreme Court today.

Now, Mr. Chairman, this is a very, very difficult line, but let me draw a distinction. There is a nexus between education and efforts to abolish discrimination. But where is the nexus between education and registering for military service? Why are our colleges and universities being turned into the special deputies of the draft? It is my profound hope that this committee examine this issue in the context of the *Grove City College* case.

The Supreme Court has yet to announce its decision on the constitutionality of the Hayakawa-Solomon amendment, and I am looking forward to its holding. However, as framers of policy, Congress must reconsider the wisdom of this policy and the wisdom of

all policies which emanate from the practice of tracking the Federal dollar.

Let us not be so mesmerized and imbued with the method that we forget that that method could be misused, even though it is being used well in the case of discrimination.

Tracking is a bureaucrat's dream. It represents power and the ultimate authority—the ability to punish. While tracking has served the enforcement of civil rights legislation well, the practice of tracking Federal appropriations must be viewed as an extraordinary means to effectuate public policy. The use of tracking to enforce the draft laws points to precisely how dangerous this practice can be.

Thank you very much.

Senator STAFFORD. Thank you very much, Senator Hatfield. We know of the time pressures you are under. If you are going over to defend an Oregon wilderness bill, you might say a good word for one from Vermont, also.

Senator HATFIELD. I would be very happy to carry that bill for you, and Massachusetts and Utah.

Senator STAFFORD. Certainly.

Without objection, the Chair would place Senator Hatfield's testimony after the balance of opening statements.

We are delighted at this point to have the opportunity to recognize the chairman of the full committee, Senator Hatch.

Senator HATCH. Thank you so much, Mr. Chairman. I want to thank the chairmen of the subcommittees, Senators Stafford and Weicker, for arranging this important hearing. I am pleased to be here. I can only stay for a little while, but I am interested in these issues and, of course, to have this opportunity to make a few comments for the record on the proposed legislation we are considering today, S. 2568, which is a bill to amend title IX of the Education Amendments of 1972 and section 504 of the Rehabilitation Act.

As you are aware, Mr. Chairman, the judicial implications of this bill, including its proposed expansion of title VI of the Civil Rights Act of 1964, will be the subject of a hearing we have presently scheduled for May 30 in the Senate Subcommittee on the Constitution, which I am pleased to Chair.

Senator Kennedy is unable to make that date. We are trying to accommodate him either with further hearings or moving that hearing. I will do everything in my power to do that. However, we do have some witnesses who may only be able to come on that day, so we will work that out between Senator Kennedy and myself. I just hope we can. But that will be another 2 or 3 days of hearings that will look into the constitutional issues pertaining to this.

It seems to have become fashionable among many supporters of this legislation to criticize the Supreme Court for the decision it rendered last February in *Grove City* v. *Bell.* And as one who has himself been unsparing of the Nation's highest judicial tribunal, I believe that the subject of title IX in the *Grove City* case—on that subject the Supreme Court has much less to atone for than does the Congress itself.

In fact, we need to do now what should have been done in drafting title IX in the first place. If the earlier Congress charged with drafting title IX had done its job well, we would not have to even

be here today. This is why it is particularly important, Mr. Chairman, that today's session, and in subsequent hearings, we derive some assistance in clarifying certain meanings which were left unclear by Congress when title IX was enacted.

We need to make certain that the language in all of title IX is clear and unambiguous, at least as much as we can, so that those who will write regulations to implement the legislation we enact will not be tempted to give our terms meanings of their own.

For example, we should not leave it to the regulation writers to define the term "indirect aid," as used by the Supreme Court. It is our responsibility as elected legislators to give the terms the guidelines they need to interpret the meaning of the term "indirect aid" as it applies to title IX.

Mr. Chairman, my concern in this regard is prompted in considerable degree by the report of the School Finance Project mandated by the Education Amendments of 1978. This bipartisan—supported Federal report was completed on February 9, 1984. In it, and successfully committed to paper for the first time, is an accurate count and description of the indirect financial support the Federal Government provides local schools through various tax system provisions offsetting local taxes.

In short, the study estimates that this Federal indirect aid adds up to as much as $19 billion. Included in this indirect aid are the deductions one takes on his or her Federal income tax return for the real and personal property taxes paid to local taxing units, the bulk of which goes for the support of elementary and secondary schools.

Another official example of indirect Federal aid to education is the deduction one takes on his or her Federal return for the income tax paid to the State, as well as sales taxes paid in many State and local jurisdictions that find their way into appropriations for school purposes.

These are only a few of the Federal revenue losses attributable to provisions of tax law which permit taxpayers to deduct local and State taxes to support the schools through their personal taxable incomes.

In effect, the Federal Government permits the homeowner to deduct what he or she pays for education from his or her Federal tax liability—a very definite form of indirect aid. And on top of this, we can add indirect support for education based on reductions of business and corporate taxes.

In the absence of language clearly saying what we want the Supreme Court's reference to indirect aid to mean, it could be easily construed to mean that a school receives indirect Federal aid when it enrolls the dependent son or daughter of a person who claims a deduction on their Federal income tax for local property taxes or State income taxes.

Thus, the presence of such a student at any school, public or private, would constitute Federal aid going to the institution and, by the terms of the legislation before us, grant the Federal Government total authority to interfere with the day-to-day operations and management of an otherwise private educational institution. That is a serious question and it is only one of myriads I can think of.

Mr. Chairman, such a dramatic grant of authority to Federal justice and education department officials over State and local government and other private organizations goes far beyond the scope of simply reversing the Supreme Court's decision related to title IX.

As you know, I support title IX. It took me a roundabout way to fully get there, but I do, and the women out in Utah, of course, have helped me to understand how effective title IX has been in helping women throughout our society. Some of those women were originally instigators of the bill that I had filed a few years ago, which was to try and resolve some of the conflicts that we thought existed then, but in the interim have found did not exist. So I reversed my position, withdrew the bill and, of course, support title IX, and have ever since.

I supported legislation to, in President Reagan's words of the night before last, prevent discrimination against women in educational institutions that are getting funds from the Government.

In the academic community, as in our country at large, there are clear evidences of women being accorded less than equal opportunity— a form of injustice which every responsible legislator has an implicit mission to correct.

For these reasons and more, I do not want legislative action unnecessarily delayed on the bill before us today. Yet, to simply change two or three words making title IX cover an institution rather than a single program or activity that is directly funded seems short-sighted to me.

To do so, we would merely be repeating the mistakes made in 1972 when the House, which first use the word "institution," changed it to read "education program or activity." Troublesome and legislatively critical questions remain to be answered, such as what is or is not considered indirect aid, just to choose that one little aspect of it which turns out to be a monumental aspect over the long haul.

Who makes this determination and from what data or information? And by what process does the indirect dollar become the basis for bringing the full weight of the Federal Government down on independent colleges or universities, like Baylor, Hillsdale, Bennington, Grove City, or Brigham Young University in my State, for instance, none of which have had patterns of discrimination or who have really been accused of discrimination, to my knowledge?

To the extent that the legislation we report is not drafted on the principle of planned obsolescence, it seems to me we have to see to it that the questions to which I refer are properly answered. For the Senate to do anything less may be to run the risk of replacing one vaguely-directed public policy with yet another, and in so doing to jeopardize not only our commitment to equal opportunity, but to liberty and justice as well.

None of this, of course, focuses on the problems related to title VI in S. 2568. These problems may be greater, some think, than those relating to title IX. There are some very interesting issues here, Federal issues, State issues, local government issues, educational issues, issues involving the whole society, as a matter of fact.

I think we have got to look into these matters and make sure that what we are doing is done in the best possible way and not

just done out of enthusiasm to try and do what is right in this particular case. I think we have got to do what is right in the end.

I intend to support title IX. I intend to support women in these matters, and hopefully when this legislation is finally completed I hope I will be able to support it as well. But in the meantime we will be asking some questions, maybe perhaps not as much in this hearing, but we will be looking into it, hopefully, on the basis of trying to get this legislation to be much more definitive, workable, effective, and perhaps just than some have felt other bits of legislation in the past have been.

Thank you, Mr. Chairman. I appreciate you turning to me.

Senator STAFFORD. Thank you very much, Senator Hatch.

Before we recognize the ranking minority member and the principal author of S. 2568, the Chair of the subcommittee will say that it is our intention to proceed with a markup on this bill during the second week in June.

Senator Kennedy, we would be very happy for your statement at this point.

Senator KENNEDY. Thank you, Mr. Chairman. The hour is moving along and I know we have a full range of witnesses to testify. I would like to file my complete statement for the record and just take 2 or 3 minutes to make a couple of comments.

Senator STAFFORD. Without objection, we will do it.

Senator KENNEDY. First of all, I want to commend you and Senator Weicker for chairing these hearings and for calling these hearings in such a timely fashion.

[Senator Weicker assumed the Chair.]

Senator KENNEDY. I am proud of the broad support that we have received for this legislation. We now have 62 cosponsors, and we now have seen the committees of the House of Representatives unanimously report this legislation out of their committees yesterday in a strong indication of bipartisan support.

So the House of Representatives is moving in a very timely way and a bipartisan way for action on the floor, and I welcome that effort and commend our House colleagues for providing that initiative, as I commend you, and Senator Weicker, and Senator Packwood, who I know wanted to be here today and attend these hearings as a principal cosponsor and one of the most active Members of our body committed to this issue.

The clear message we are sending today, Mr. Chairman, to the White House and to the country is that the coalition for civil rights is alive and well in the Congress of 1984. The purpose of this measure is to correct the mistake the Supreme Court made in its unfortunate and excessively narrow ruling in the *Grove City College* case.

At the instigation of the Justice Department, the Supreme Court severely undercut the basic law enacted by Congress in 1972 outlawing sex discrimination in any school or college receiving Federal aid. The result is a gaping loophole in all our antidiscrimination laws.

Other key statutes forbidding bias based on race or age or handicap contain provisions essentially identical to those misinterpreted by the Court in its decision on sex discrimination. The *Grove City* case is thus a wholesale invitation to discrimination that clearly

jeopardizes the hard-won rights of millions of students, women, minorities, the elderly, and the disabled in every region of our country.

No Congress that believes in the principle of equal justice under law can permit the *Grove City* case to stand. The legislation that we are considering today will reverse all the effects of that decision. I hope that we will have the active support of the administration and that the President will speak to this issue.

Federal aid must never again be used in any way, shape, or form to subsidize discrimination. Just as the Voting Rights Act was the great civil-rights achievement in 1982 and the Martin Luther King holiday bill was the great success of 1983, so this bill should be the civil rights victory of 1984.

[The prepared statement of Senator Kennedy follows:]

STATEMENT BY SENATOR KENNEDY AT JOINT
HEARING OF EDUCATION AND HANDICAPPED
SUBCOMMITTEES ON THE CIVIL RIGHTS ACT
OF 1984

TODAY, WE CONSIDER THE MOST IMPORTANT UNFINISHED BUSINESS NOW BEFORE THIS CONGRESS--THE CIVIL RIGHTS ACT OF 1984. I COMMEND THE LEADERSHIP OF SENATORS STAFFORD AND WEICKER IN CONVENING THESE JOINT HEARINGS AND I AM PLEASED TO WELCOME MY FRIEND AND COLLEAGUE, SENATOR PACKWOOD, TO THE LABOR AND HUMAN RESOURCES COMMITTEE. HE IS THE PRINCIPLE CO-SPONSOR OF THIS BILL AND A TIRELESS CHAMPION OF CIVIL RIGHTS. SIXTY-TWO OF OUR SENATE COLLEAGUES HAVE NOW JOINED US IN SPONSORING THIS IMPORTANT LEGISLATION. I ALSO COMMEND OUR COLLEAGUES ON THE HOUSE COMMITTEES WHO VOTED YESTERDAY TO REPORT THIS LEGISLATION UNANIMOUSLY--AND I EMPHASIZE THE WORD "UNANIMOUSLY." IT IS CLEAR THAT THE BI-PARTISAN

COALITION FOR CIVIL RIGHTS IS ALIVE AND WELL IN CONGRESS.

TODAY, THIS COALITION SENDS AN URGENT MESSAGE TO THE REAGAN ADMINISTRATION IN GENERAL, AND TO THE DEPARTMENT OF JUSTICE IN PARTICULAR. CONGRESS MEANT WHAT IT SAID WHEN IT PASSED THE FUNDAMENTAL LAWS PROHIBITING THE USE OF FEDERAL FUNDS IN ANY FORM FOR DISCRIMINATION ON THE BASIS OF RACE, SEX, AGE OR DISABILITY.

THIS CIVIL RIGHTS BILL IS INTENDED TO CORRECT THE MISTAKE THE SUPREME COURT MADE IN ITS DECISION IN THE GROVE CITY COLLEGE CASE. IF THE DECISION GOES UNCHALLENGED, MILLIONS OF WOMEN, MINORITIES, ELDERLY AND HANDICAPPED CITIZENS WILL BE DENIED THE BASIC PROTECTIONS OF THE LAW. AND TAXPAYERS WILL BE FORCED TO SUPPORT EDUCATIONAL INSTITUTIONS WHICH DENY THEIR CHILDREN

EQUAL EDUCATIONAL OPPORTUNITY.

OPPONENTS OF THIS BILL NEVER LIKED THESE LAWS IN THE FIRST PLACE. NO CONGRESS AND NO SOCIETY THAT BELIEVES IN THE PRINCIPLE OF EQUALITY CAN PERMIT THE GROVE CITY CASE TO STAND.

UNFORTUNATELY, SOME ADMINISTRATION SPOKESMAN PAYS LIP SERVICE TO THIS PRINCIPLE WHILE SPREADING MISINFORMATION ABOUT THIS BILL. THE DEPARTMENT OF JUSTICE OPPOSED THIS LEGISLATION IN THE HOUSE, BECAUSE THEY SAID IT, "GOES WELL BEYOND SIMPLY UNDOING THE EFFECTS OF GROVE CITY."

THAT IS PLAINLY UNTRUE. THE LANGUAGE OF THIS LEGISLATION IS CLEAR. WE INTEND TO RESTORE THE LAW AS IT EXISTED BEFORE THE SUPREME COURT ISSUED ITS UNFORTUNATE DECISION. AS SENATOR PACKWOOD AND I STATED WHEN WE INTRODUCED THIS LEGISLATION,

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"THE NARROW PURPOSE OF THE BILL IS TO ELIMINATE THE INAPPROPRIATELY RESTRICTIVE INTERPRETATION IMPOSED BY THE GROVE CITY DECISION AND REAFFIRM THE LEGAL SAFEGUARDS AVAILABLE UNDER THESE CIVIL RIGHTS STATUTES." NO MORE THAN THAT--BUT SURELY NO LESS.

I REGRET THE JUSTICE DEPARTMENT'S OPPOSITION, BUT HOSTILITY IS HARDLY SURPRISING, SINCE THEY HAVE RESISTED EVERY MAJOR INITIATIVE IN THE AREA OF CIVIL RIGHTS IN THE LAST FEW YEARS. INDEED, THE JUSTICE DEPARTMENT OFFICIALS WHO OPPOSE US TODAY ARE THE SAME OFFICIALS WHO PURSUADED THE SUPREME COURT TO CARVE THIS GAPING HOLE IN OUR ANTI-DISCRIMINATION LAWS. BUT I'M PLEASED THAT SECRETARY BELL HAS SEEN THE NEED FOR ACTION.

THE FACT IS THESE CIVIL RIGHTS STATUTES HAVE MADE A PROFOUND DIFFERENCE IN THE LIVES OF MILLIONS OF OUR FELLOW CITIZENS:

-- IN 1964 LESS THAN ONE PERCENT OF BLACK CHILDREN IN THE SOUTH ATTENDED SCHOOL WITH WHITE CHILDREN. TWENTY YEARS LATER, 75% NOW ATTEND INTEGRATED SCHOOLS;

-- BLACK ENROLLMENT IN COLLEGES INCREASED BY 92% IN THE DECADE OF THE 1970s;

-- THE PARTICIPATION OF WOMEN IN SPORTS IN OUR HIGH SCHOOLS AND COLLEGES HAS SOARED SINCE THE ENACTMENT OF TITLE IX; AND

-- DISABLED YOUNGSTERS ARE RECEIVING THE SPECIAL EDUCATION THEY NEED IN RECORD NUMBERS SINCE THE ENACTMENT OF SECTION 504 IN 1973.

MUCH OF THIS PROGRESS COULD BE WIPED OUT IF WE FAIL TO ENACT THIS LEGISLATION. ALREADY, THE OFFICE OF CIVIL RIGHTS IN THE DEPARTMENT OF EDUCATION HAS CLOSED ITS FILED ON OVER A DOZEN

CASES SINCE GROVE CITY WAS HANDED DOWN.

WE MUST ACT NOW TO STOP THIS SORRY TREND. THE FEDERAL GOVERNMENT MUST NEVER AGAIN SUBSIDIZE THOSE WHO VIOLATE ITS LAWS OR ALLOW TAX DOLLARS TO UNDERWRITE DISCRIMINATION. I WELCOME THESE HEARINGS, AND I URGE THIS COMMITTEE AND THE CONGRESS TO ACT ON THIS LEGISLATION AS SOON AS POSSIBLE.

Senator WEICKER. Thank you very much, Senator Kennedy.

I have a statement which I want submitted into the record in its entirety.

I concur with the remarks heretofore made, but I also have to say that this will give the Congress another opportunity to stand up on the issue of civil rights. I was disappointed with the Supreme Court decision and disappointed, I might add, with certain attitudes of the administration.

Nevertheless, I have not really found any great solace, with some notable exceptions, on the floor of the U.S. Senate on this matter of civil rights during the past several years. So, regardless of how we point out anybody else's failings, let Congress now stand up and reaffirm those matters that I thought had been put to rest many years ago.

The times that we are in could not come to pass unless either there was a great deal of congressional opposition or, which is really the case, congressional silence on these issues that affect so many Americans either in terms of their physical, or mental condition, race, religion, or whatever.

I think it is a great time to break the silence by Congress and I think this is an opportunity to do that.

So, with those comments, let us proceed to our first panel of witnesses.

[The prepared statement of Senator Weicker follows:]

MAY 24, 1984

STATEMENT OF SENATOR LOWELL WEICKER, JR., CHAIRMAN
SUBCOMMITTEE ON THE HANDICAPPED
ON
S.2568, THE CIVIL RIGHTS ACT OF 1984
JOINT HEARING - SUBCOMMITTEE ON THE HANDICAPPED
SUBCOMMITTEE ON EDUCATION, ARTS AND THE HUMANITIES

TODAY'S JOINT HEARING OF THE SUBCOMMITTEES ON THE HANDICAPPED AND EDUCATION, ARTS AND THE HUMANITIES IS CALLED TO CONSIDER S.2568, THE CIVIL RIGTHS ACT OF 1984. I AM VERY PLEASED TO BE A COSPONSOR OF THIS LEGISLATION WHICH WILL REAFFIRM CONGRESS' ORIGINAL INTENT WITH REGARDS TO OUR NATION'S FOUR MAJOR ANTI-DISCRIMINATION STATUTES: TITLE IX OF THE EDUCATION AMENDMENTS OF 1972, SECTION 504 OF THE REHABILITATION ACT OF 1973, THE AGE DISCRIMINATION ACT OF 1975, AND TITLE VI OF THE CIVIL RIGHTS ACT OF 1964.

S.2568 IS CONGRESS' RESPONSE TO THE RECENT "GROVE CITY" DECISION OF THE SUPREME COURT. IN THIS DECISION THE COURT RULED THAT TITLE IX-- AND BY IMPLICATION THE OTHER STATUTES AMENDED BY THIS BILL-- APPLIED TO A SPECIFIC PROGRAM OR ACTIVITY WHICH RECEIVES FEDERAL FINANCIAL ASSISTANCE. THE HISTORY OF THE ENFORCEMENT OF THESE STATUTES, CASE LAW ASSEMBLED RELATING TO THEM, AND ORIGINAL CONGRESSIONAL INTENT ALL SUPPORT THE OPPOSITE INTERPRETATION. THESE LAWS WERE DESIGNED TO PROHIBIT DISCRIMINATION IN THE BROADEST SENSE, SO THAT NO FEDERAL FUNDS COULD SUPPORT DISCRIMINATION, EVEN IN AN INDIRECT MANNER.

SECTION 504 OF THE REHABILITATION ACT OF 1973 WAS PASSED BY CONGRESS TO PROHIBIT DISCRIMINATION AGAINST INDIVIDUALS ON THE

BASIS OF HANDICAP. EXCLUSION FROM PROGRAMS, DENIAL OF BENEFITS, AND SEGREGATION WERE TYPICAL EXPERIENCES FOR OUR HANDICAPPED CITIZENS. PREJUDICAL ATTITUDES ABOUT THE CAPABILITIES OF HANDICAPPED PERSONS BASED ON STEROTYPES AND MISINFORMATION WERE COMMONPLACE. CONGRESS ACTED FORCEFULLY TO OPEN THE DOORS OF OPPORTUNITY AND EQUAL ACCESS TO HANDICAPPED PERSONS WHEN IT PASSED SECTION 504. THIS RECENT SUPREME COURT DECISION REPRESENTS AN ATTEMPT TO CLOSE THOSE DOORS BY LIMITING ANTI-DISCRIMINATION PROTECTION FOR HANDICAPPED PERSONS.

WHILE OUR SOCIETY HAS MADE GREAT PROGRESS IN CURBING DISCRIMINATORY PRACTICES, LET US NOT UNDERESTIMATE THE WORK THAT REMAINS TO BE DONE. A REPORT ISSUED BY THE CIVIL RIGHTS COMMISSION JUST 8

MONTHS AGO CONCLUDED THAT: "DESPITE SOME IMPROVEMENTS, PARTICULARY IN THE LAST TWO DECADES, DISCRIMINATION AGAINST HANDICAPPED PERSONS CONTINUES TO BE A SERIOUS AND PERVASIVE SOCIAL PROBLEM. IT PERSISITS IN SUCH CRITICAL AREAS AS EDUCATION, EMPLOYMENT INSTITUTIONALIZATION, MEDICAL TREATMENT, INVOLUNTARY STERILIZATION, ARCHITECTUAL BARRIERS AND TRANSPORTATION."

WE MUST NOT ABANDON OUR COMMITMENT TO THE CIVIL RIGHTS OF OUR NATION'S HANDICAPPED, WOMEN, MINORITIES AND ELDERLY. THERE ARE STILL TOO MANY CIVIL RIGHTS VIOLATIONS THAT MUST BE ADDRESSED--AND ELIMINATED. LET US MOVE FORWARD BY REAFFIRMING THOSE RIGHTS THROUGH EXPEDITING THE PASSAGE OF S.2568.

Senator DENTON. I have an opening statement, Mr. Chairman.

Senator WEICKER. I beg your pardon, Senator Denton; I thought you already made it. Senator Denton, you proceed right ahead.

Senator DENTON. Thank you, Mr. Chairman.

Back in the thirties, when it was not politically advantageous to be in favor of civil rights or a better racial situation in the South, my mother was for that and helped Ralph McGill of the Atlantic Constitution, and as a grammar school student I was active to the degree that I could be.

I am pleased to be able to participate in today's hearing on the Civil Rights Act of 1984. I have come to this hearing to assist the subcommittee to determine whether or not the Congress should act somehow to reverse the Supreme Court's decision in *Grove City College* v. *Bell.*

In that case, the Supreme Court held that a private school receiving Federal financial assistance must comply with title IX only in the program or activity that actually received the funding.

Proponents of S. 2568 wish to overturn that decision and dramatically extend the scope of title IX and three other major pieces of civil rights legislation—title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1983.

Those statutes are the bedrock of Federal civil rights law and should not be tampered with unless there is an absolute and overriding necessity to do so. Moreover, since jurisdiction over those acts is split between two committees, this one and the Committee on the Judiciary, I believe that we should have full and fair hearings before both committees before reporting any bill that would alter the existing statutes.

I do not believe we need to act in haste. The *Grove City* case itself highlights the fact that few of the colleges that have challenged the scope of title IX have discriminated or intend to discriminate against anyone on the basis of sex.

Unlike the turbulent period leading up to the enactment of the Civil Rights Act of 1964 or the Voting Rights Act of 1965, there appears to be no massive resistance to the goal of nondiscrimination on the basis of race, handicap, sex, or age. The vast majority of Americans, including this Senator, favor civil rights laws that help ensure equal opportunity for all.

The question before us today is not that of whether a person is for or against discrimination against women or anyone else. The question is that of how far the Federal Government should go in policing the activities of the States, municipalities, private and public institutions, and even individuals.

The *Grove City* case itself illustrates that using the cutoff of Federal funds to force compliance with regulations laid down by the Federal Government can be counterproductive. As Justice Louis Powell pointed out in his concurring opinion in *Grove City,* the Department of Education took that small, independent college, which the Department acknowledges had engaged in no discrimination whatsoever, through 6 years of litigation against the full weight of the Federal Government.

Having prevailed on the assertion that Federal aid to individual students attending the college constitutes direct Federal financial

assistance to the financial aid program of the college, the Department is now theoretically in a position to terminate student loans and grants.

The people most directly harmed by such a decision would be the students who are totally without fault in the matter and who, without those scholarship funds, may have to abandon their college education.

If the Congress passed S. 2568 in its current form, the Federal Government will be given the power to terminate all Federal funding to an entire institution if but one small program receiving a Federal grant is judged or thought to have engaged in some discriminatory practice, however minor.

Some may find that desirable and justifiable as a means of ending discrimination in any form anywhere it is found. I do not say that they are wrong to hold that view, but I do want to ensure that the Congress and the country realize the full consequences and ramifications of S. 2568.

I am not unfamiliar with the situation at the Naval Academy, for example, and I do not think one could make much of a case that there is discrimination against women over there, but you might ask some other questions.

Assistant Attorney General Reynolds, in testimony before the House Judiciary Committee, said that the administration hoped and expected that:

> Congress would put the Civil Rights Act of 1984 through the same close scrutiny and subject it to the same rigors of open and freewheeling debate in committees and on the floor of the House and Senate that has been the strength of past enactments of civil rights legislation.

This seems to be a sensible and fair challenge to me and I wish to hear more and learn from the witnesses today and from the debate before this committee.

In testimony before the House, the administration pointed to several significant problems with S. 2568, but at the same time offered to provide assistance in formulating a bill more closely aligned with Congress 'stated objective.

We will not hear from the administration today. I hope that we will have the opportunity to do so sometime before we vote on S. 2568. I do not think that the country or the Congress will be well served if proponents of S. 2568 simply reiterate the canned phrase that "this bill will do no more than reverse the holding of the *Grove City* case."

If there is more that must be done to use the control of Federal funds to eliminate discrimination, let them demonstrate that this bill is the right tool for that job, and I am going to be watching closely to see if that is done.

Thank you, Mr. Chairman.

Senator WEICKER. Thank you very much, Senator Denton.

We will now proceed to the first panel, consisting of Ms. Arlene Mayerson, directing attorney, Disability Rights Education and Defense Fund; Mr. Clarence Hart of California; and Mr. Bill Gibson of Utah.

If those witnesses would please come to the table, it is my understanding that all those who are testifying today have been requested to limit their oral testimony to 5 minutes. Their statements and

the statements of all subsequent witnesses will be included in their entirety in the record. That will permit for any questions from the panel.

Last, we want to make sure that everybody is heard before we start voting today, so I would appreciate it if our witnesses would watch the lights in front of them and constrain themselves in the sense of those time limits.

It is nice to have you all here. Ms. Mayerson, why do you not lead off? That is the batting order that is in front of me, so let us do it that way.

STATEMENT OF ARLENE B. MAYERSON, DIRECTING ATTORNEY, DISABILITY RIGHTS EDUCATION AND DEFENSE FUND; CLARENCE F. HART, OF CALIFORNIA; AND BILL GIBSON, OF UTAH

Ms. MAYERSON. Mr. Chairman and members of the committee, my name is Arlene Mayerson. I am the directing attorney for the Disability Rights Education and Defense Fund. I am pleased to be here today with Clarence Hart and Bill Gibson. Mr. Hart was a client of mine in the first case which held that 504 covered employment regardless of the purpose of the Federal funds. Mr. Gibson has been a long-time colleague and has both personal and professional experience working with section 504.

I am also honored to be here today to testify on S. 2568, not only on behalf of my organization, but also on behalf of 16 other national disability organizations.

The passage of section 504 in 1973 was an historic event for disabled Americans. For the first time, Congress recognized that disabled people, like minorities and women, were subject to discrimination and were entitled to basic civil rights protections.

The impact of section 504 for disabled people cannot be overstated. For disabled people, section 504 means the freedom to choose, to belong, to participate, to have dignity, and to have the opportunity to achieve. This could not be better illustrated than by the testimony you will hear from Mr. Hart.

Since enactment of section 504 just a decade ago, the character of American society has been transformed. It can no longer be assumed that disabled people, adults and children, will be out of sight and out of mind, shut away in institutions, nursing homes, segregated schools and programs.

Because of section 504, disabled people are beginning to take their rightful place in the mainstream of American life. In section 504, Congress extended the promise of equal citizenship to 36 million disabled Americans. We have come a long way toward that goal in the last 10 years. The gains are impressive, but we are only just beginning. The path to equality is long.

We are here today because we believe that the Supreme Court's decision in *Grove City College* hopelessly obstructs this path. According to the *Grove City* decision, that college would be free to refuse to admit blind students, to refuse to hire teachers who use wheelchairs or had epilepsy, or to decide that while disabled people make good social workers, they do not make good engineers, architects, doctors or lawyers. Unfortunately, these practices and this kind of stereotyping is all too familiar today.

The negative impact of the *Grove City College* decision is ironically illustrated in the area of employment. On the same day that the Supreme Court handed down the *Grove City* decision, it decided *Consolidated Rail Corp.* v. *Darrone*, which resolved a 5-year conflict among the circuits and upheld broad employment coverage under section 504.

The *Darrone* decision was held as a major victory for disability rights, but like in all other areas under section 504 and the other civil rights statutes, the *Grove City* decision threatens to drastically limit the applicability of employment protections under section 504.

This limitation is well illustrated in a case currently pending before the Department of Education. In that case, the Department of Education, after an investigation, found that a teacher who had lupus was discriminated against solely on the basis of her disability.

The school district now claims that the Office of Civil Rights no longer has jurisdiction to pursue the case after *Grove City* because the teacher had been hired to teach math and physical education, and neither of these programs receive direct funds.

Claims such as this one could involve years of litigation to resolve. Under previous law and administrative policy, the jurisdiction of OCR to investigate was clear.

The written testimony which we have submitted fully sets forth the legislative history of section 504. However, I would like to highlight one particularly compelling point here. In 1977, Congress conducted oversight hearings on section 504 in which it carefully examined and reviewed the HEW 504 regulations.

Those regulations incorporated the title VI procedural enforcement regulations. The title VI procedural enforcement regulations provide for investigation and review of recipients of Federal funds. No mention is made of programs until the sections dealing with fund termination.

Congress explicitly approved this practice and, as stated in the Senate report, the 1978 amendments to section 504, "codified this existing practice as a specific statutory requirement."

There can be no doubt that the long history of administrative enforcement of title VI was known by Congress and reaffirmed in 1978. Indeed, there was nothing radical in 1978 about the fundamental principle that the Federal Government should not fund recipients who discriminate, nor was there any question that the Federal Government had a critical role in preserving and protecting basic civil rights.

The cry of Federal intrusion by opponents of S. 2568 is not new to the disability community, but what is being called Federal intrusion is the Federal protection that disabled Americans depend upon.

Not only disabled adults, but parents of disabled children have depended on this Federal protection to secure basic, fundamental rights for their children.

When this administration sought to weaken Public Law 94-142 regulations and the 504 regulations assuring each child a free, appropriate public education, they claimed that the regulations were

too intrusive, and that educational integrity and local control needed to be preserved.

Well, thousands of parents from across the country came forward to testify about the difference these laws had made in their children's lives and begged the policymakers for continued Federal intrusion.

Now is not the time to question the role of the Federal Government in assuring that entities which accept Federal funds do not violate basic civil rights protections. The doors have been opened and section 504 is working.

Since 1977 when the section 504 regulations were promulgated, one national study reports that the number of disabled freshmen has more than doubled. We have conducted an informal review of colleges and universities across the Nation, and reports we have heard would make Congress proud of what has been achieved in just 10 years.

Ohio State University is a typical example. In 1975, there were 32 students who were identified as being disabled. In 1984, there are 662 disabled students. The campus went from being almost totally inaccessible to nearly fully accessible. The disabled students' needs are fully met through a well-developed network of volunteers in effective interagency cooperation.

All across the country, in small and large institutions, enormous progress was reported, and in each case the existence of section 504 was given as the primary reason.

Once again, disabled Americans turn to Congress to reaffirm the basic principles of equal opportunity through passage of S. 2568, which is nothing more than a clarification of Congress' longstanding intent that recipients of Federal funds are prohibited from engaging in discriminatory practices. We are confident that this Nation's commitment to disabled citizens, which was firmly established in 1973, will not now be abandoned.

Thank you.

[The prepared statement of Ms. Mayerson follows:]

STATEMENT

OF

ARLENE B. MAYERSON

ON BEHALF OF

THE DISABILITY RIGHTS EDUCATION AND DEFENSE FUND

AND

AMERICAN COALITION OF CITIZENS WITH DISABILITIES

AMERICAN COUNCIL OF THE BLIND

AMERICAN SPEECH-LANGUAGE-HEARING ASSOCIATION

ASSOCIATION FOR CHILDREN WITH LEARNING DISABILITIES

ASSOCIATION OF RETARDED CITIZENS

COUNCIL ON EXCEPTIONAL CHILDREN

CONFERENCE ON EDUCATION ADMINISTRATORS SERVING THE DEAF

EPILEPSY FOUNDATION OF AMERICA

NATIONAL EASTER SEALS SOCIETY

NATIONAL COUNCIL OF INDEPENDENT LIVING PROGRAMS

NATIONAL COUNCIL ON REHABILITATION EDUCATION

NATIONAL REHABILITATION ASSOCIATION

PARALYZED VETERANS OF AMERICA

THE CONVENTION OF AMERICAN INSTRUCTORS OF THE DEAF

THE NATIONAL ASSOCIATION OF PRIVATE RESIDENTIAL FACILITIES FOR THE MENTALLY RETARDED

UNITED CEREBRAL PALSY ASSOCIATION, INC.

BEFORE THE

SENATE SUBCOMMITTEE ON THE HANDICAPPED

AND

SUBCOMMITTEE ON EDUCATION, ARTS AND HUMANITIES

on S.2568

("Civil Rights Act of 1984")

May 22, 1984

Mr. Chairman and Members of the Committees

My name is Arlene B. Mayerson. I am the directing attorney for the Disability Rights Education and Defense Fund (DREDF). Our organization is a national research, education, community organizing and advocacy organization dedicated to the integration and equal opportunity of 36 million disabled Americans. I am honored to be here today to testify on H.R. 5490 not only on behalf of my organization but also on behalf of 16 other national disability organizations.

We have submitted written testimony to the Committees and request that it be included in the record.

The passage of Section 504 in 1973 was an historic event for disabled Americans. For the first time Congress recognized that disabled people, like minorities and women, were subject to discrimination and were entitled to basic civil rights protections. This represented a major shift in disability public policy and a fundamental challenge to traditional notions about disability. Historically, the inferior economic and social status of disabled people was accepted as an inevitable consequence of being disabled. Section 504's anti-discrimination language evidences Congress' understanding that many of the problems faced by disabled people are not inevitable, but are instead the result of discriminatory policies and practices based on unfounded and outmoded stereotypes and prejudices toward disabled people.

For disabled people, Section 504 means the freedom to choose, to belong, to participate, to have dignity and the opportunity to achieve. Since enactment of Section 504 just a decade ago, the character of American society has been transformed. It can no longer

be assumed that disabled people, adults and children, will be "out of sight, out of mind." Because of Section 504, disabled people are beginning to take their rightful place in the mainstream of American life. We have come a long way towards the goal of equal opportunity in ten short years--the gains are impressive--but we are only just beginning--the path to equality is long. We are here today because we believe that the Supreme Court's decision in Grove City College hopelessly obstructs this path.

According to the Grove City decision, that college would be free to refuse to admit blind students, to refuse to hire teachers who used wheelchairs or to decide that while disabled people make good social workers, they do not make good engineers, architects, doctors or lawyers. Because of this kind of stereotyping, disabled people have been and continue to be dissuaded from those careers, and many others, because of their disabilities. In a recent case in Colorado, a psychiatrist with outstanding credentials was rejected from a psychiatric residency program because he had multiple scleorosis and used a wheelchair. The court held that the school had violated Section 504 because the admissions committee decision was based entirely on stereotypes and not on the credentials of the disabled applicant and the University was ordered to admit him. Puskin v. Regents of the University of Colorado, 658 F.2d 2373 (10th Cir. 1981).

The need for strong antidiscrimination provisions to assure equal opportunity and the negative impact of the Grove City College decisions is ironically illustrated in the area of employment. On the same day that the Supreme Court handed down the Grove City decision, it decided Consolidated Rail Corporation v. LeStrange Darrone, 465 U.S.

104 S.Ct. 1248 (1984) which resolved a five year conflict among the circuits and upheld broad employment coverage under Section 504. The Darrone decision was hailed as a major victory for disability rights. But like in all other areas under 504 and the other civil rights statutes, the Grove City decision threatens to drastically limit the applicability of employment protections under 504. A recipient could argue that its employment practices were shielded from 504 if the personnel office received no federal funds. Alternatively, certain departments within a college or university or even a school district could discriminate while others could not depend on whether the department directly received federal funds. Such a claim has recently been made in a case pending before the Department of Education. In that case the Department of Education, after an investigation, found that a teacher who had lupus had been discriminated against "solely on the basis of disability." The school district claimed that OCR no longer had jurisdiction to pursue the case after Grove City because the teacher had been hired to teach math and physical education and neither of these "programs" received federal funds. 17 Education Daily, p. 4 (April 11, 1984). Claims such as this one could involve years of litigation to resolve. Under previous law and administrative policy the jurisdiction of OCR to investigate was clear.

The written testimony which we have submitted fully sets forth the legislative history of Section 504 and demonstrates that Congress intended to create a broad policy of nondiscrimination by recipients of federal funds. However, I would like to highlight one particularly compelling point here. In 1977 Congress conducted oversight hearings on Section 504. As part of that process Congress reviewed the 504 regulations which had been promulgated by HEW that same year. In

addition to the substantive provisions, HEW incorporated the Title VI procedural enforcement regulations into the 504 regulations. Congress explicitly approved this and in the 1978 amendments fo 504 "codifie[d] [this] existing practice as a specific statutory requirement." S. Rep. No. 890, 95th Cong., 2nd Sess. (1978).

The Title VI procedural regulations provide for investigation and review of recipients of federal funds as that term is defined in the regulations. No mention is made of programs until the sections dealing with fund termination. 45 C.F.R. 80.7; 80.8(c). Hence, in keeping with this well-established practice, the 1978 amendment to Section 504 provides that:

> The remedies, procedures, and rights set forth in Title VI of the Civil Rights Act of 1974 shall be available to any person aggrieved by any act or failure to act by any recipient of Federal assistance or Federal provider of such . . . .

There can be no doubt that the long history of administrative enforcement of Title VI was known by Congress and reaffirmed in 1978. Indeed, there was nothing radical in 1978 about the fundamental principle that the federal government should not fund recipients who discriminate. Nor was there any question that the federal government had a critical role in preserving and protecting basic civil rights.

Now is not the time to question the role of the federal government in assuring that entities which accept federal funds do not violate basic civil rights protections. This Nation made that commitment over 20 years ago. For disabled Americans that commitment in 1973 has formed the ground on which hopes and dreams grow.

The doors have been opened. The statute is working.

Since 1977 when the 504 regulations were promulgated, one national study reports that the number of disabled freshmen has more

than doubled. We have conducted an informal review of colleges and universities across the Nation and the reports we have heard would make Congress proud of what has been achieved in just ten years. Ohio State University is a typical example. In 1975, there were 32 students who identified as being disabled. In 1984 there are 662 disabled students. The campus went from being almost totally inaccessible to be nearly fully accessible. The students' needs are fully met through a well-developed network of volunteers and effective inter-agency cooperation. All across the country, in small and large institutions, enormous progress was reported, and in each case the existence of Section 504 was given as the primary reason.

Once again disabled Americans turn to Congress to reaffirm the basic principles of equal opportunity through passage of H.R. 5490, which is nothing more than a clarification of Congress' longstanding intend that recipients of federal funds are prohibited from engaging in discriminatory practices. We are confident that this Nation's commitment to disabled citizens which was firmly established in 1973 will not now be abandoned.

Senator WEICKER. I have to request that all witnesses adher to the 5-minute rule, and I will tell you why. In order that we can hear everybody, there is a noon vote coming up on the U.S. Senate floor and we have other witnesses from many other agencies.

I would appreciate it if witnesses would stay within that 5-minute bracket so that everybody would be able to testify and the panel would be able to ask questions.

Mr. Hart?

Mr. HART. Mr. Chairman, and members of the committee, thank you for this opportunity to present testimony about the importance of section 504 of the Rehabilitation Act in my life and the lives of other disabled people.

I have had epilepsy since age 11. This affected me when growing up because I was unable to do things with other kids, so I felt left out. People did not understand when I had a seizure and felt sorry for me or afraid of me rather than realizing that I wanted to be included and accepted like everyone else. So I just started lying and did not inform anyone of my epilepsy because I wanted to participate in sports and participate in any other regular sports with any other person.

At age 15 years old I contracted spinal meningitis, which made my seizures worse. At age 18 I went on SSI because at that time I was unable to work due to uncontrollable seizures and was uncertain about what I was going to do with my life.

By the time I was 22 the doctors were able to give me medication that helped the seizures. I still had petit mal seizures, but the grand mal were finally under control. At that point I became dissatisfied and wanted to get off SSI and pursue a career, so I went to college to seek a degree in law enforcement. When I graduated I started looking for a full-time job in law enforcement.

[Senator Stafford resumed the Chair.]

Mr. HART. Before and during college, I had volunteered at the Alameda County Probation Department as a group counselor at juvenile hall. While I was there as a volunteer, I assumed almost the full responsibilities of that job. I enjoyed the work and soon knew that working as a youth counselor was what I wanted to do.

So when a job came open in the probation department, I applied for it. I passed the required exams and it seemed like I would be considered for a position. However, the department insisted that a driver's license was necessary for the job. Because I was unable to get one due to my epilepsy, they refused to hire me.

The department would not accommodate my disability by waiving a license requirement even though I knew it would be very easy to do. That was very distressing for me. I felt again like I was not a full person. I was not able to get a job and work and pursue my goals. I did not know about 504 or that I had any rights at all.

Through some contacts, I was informed that I did have rights and was encouraged to pursue my career with the probation department. With the help of Ms. Mayerson, we challenged the probation department's refusal to employ me. We eventually went to court and won.

I cannot explain how good that felt. I had been afraid my whole life to tell people I had epilepsy because you cannot really see that I have a disability. I tried to hide it as often as I could. Now I no

longer feel ashamed of myself, nor am I afraid to tell people about my disability.

In fact, I found out that there were a number of youths at juvenile hall who also had epilepsy, and I have been able to help them by letting them know I have the same thing, too, epilepsy, and I am disabled, but I can work.

After the lawsuit, when I first went to work for the probation department it was very hard. My employers were very leery about hiring a person with epilepsy. They watched over me; they even posted notices about what to do if someone had a seizure.

But after a while they learned that I was no different from anyone else; that I was a serious person about my work. Today, I have successfully been a juvenile hall counselor for over 4 years. My job evaluations are excellent and I enjoy my work as a counselor.

Without 504 my life would be very different. I would still be on SSI. Instead, I work and am a citizen with rights who contributes to the system. Now I pay tax instead of being forced to live off of tax dollars.

There are a lot of other disabled people across the country with stories like mine. Broad coverage under 504 is necessary to ensure that we all have an equal opportunity to pursue our goals.

Thank you.

Senator STAFFORD. Thank you very much, Mr. Hart.

The Chair is about to recognize Mr. Gibson, but the Chair is going to point out that we are going to really require people to confine themselves to the 5 minutes. The lights are there to let you know when you are on the green, when you have 1 minute left, and when you are in the red. And when you are in the red, the Chair is going to have to stop you because otherwise we will not be fair to witnesses who are backed up and will not get a chance to testify.

Mr. Gibson, we will be very happy at this point to hear from you.

Mr. GIBSON. Mr. Chairman, and members of the committee, my name is Bill Gibson. I would like to thank you for this opportunity to provide testimony on the impact of section 504 of the Rehabilitation Act of 1973 on me personally and on other disabled people in the State of Utah and throughout the Nation.

I am currently a rehabilitation counselor. I have held a subcontract for the Federal Government to provide technical assistance on section 504 to disabled people, parents of disabled children, and recipients in Utah, Nevada, Colorado, and New Mexico.

I have also served as a placement counselor at Weber State College, assisting disabled students to secure employment. From both my personal and professional experience, I can say without equivocation that 504 has been the single most important piece of legislation for disabled people.

The idea that a recipient of Federal money would only be required to comply with section 504 in some of its programs and not others would undermine the effectiveness of section 504 and would certainly send a discouraging message to the millions of disabled people who have depended upon this law for their claim to participate and belong.

I am especially pleased to be here today and would like to thank Senator Orrin Hatch for his dedicated work to the disabled citizens

of Utah. I had the honor of serving on his special committee in the State of Utah for the handicapped.

Senator, we appreciate your support of 504, Public Law 94-142, and other disability laws.

I would like to begin by telling you about myself. I have been almost totally blind since birth. Neither retina is fully developed and I have scar tissue on both retinas. I am unable to read print. I attended the Utah School for the Blind from the age of 6 until the age of 17, a total of 11 years.

At the age of 17 I began attending public high school, and I can honestly say that the opportunity to attend public high school was the best thing that ever happened to me. I began to feel like I belonged in my community and was accepted by people my own age.

The decision to attend public school made me realize that I had choices and could make them in my own life and I could really pursue them.

In 1971, at the age of 19, I enrolled in Weber State College at Ogden, UT. At that time, there were about 12 disabled students enrolled on campus. Services to students at the time were very limited. Although Weber State was a relatively new campus, there were many architectural and program barriers to contend with.

During the mid-1970's, after the enactment of section 504 and before the regulations were signed, Weber State College began to realize that disabled students were increasing in number. Modifications had begun in response to changing attitudes and increasing student needs, certainly, but also because the Federal Government would soon require that disabled students be accommodated.

It was after the promulgation of the section 504 regulations that major changes began to happen at the school. One of the most notable was the removal of many architectural barriers. The library, which had not been accessible to disabled students, was soon ramped. Other external architectural barriers were removed to enable disabled students to participate in classes throughout campus.

Even more important than the removal of physical barriers was the removal of attitudinal and program barriers. Teachers began to work with students to allow extended time for tests. Science programs were made open to students through laboratory modifications. Other adaptations were made to open many academic programs.

Other colleges and universities in Utah have also made modifications in their programs as a result of section 504. Student enrollment has similarly increased at these post-secondary educational institutions.

The reason section 504 has worked successfully in colleges and universities throughout Utah is because of the flexibility of regulations.

I eventually earned a B.A. degree in communications and a master's degree in special education from the University of Utah. The reason I was able to gain these professional degrees was due, to a great extent, to the enactment of section 504 and many of the support services which I received.

Disabled people depend on Congress to set the tone for equality and integration of disabled Americans. Therefore, I urge you, Mr.

Chairman, and members of the committee, to give S. 2568 your most serious consideration. The future of disabled people in the Nation depends on it.

Thank you.

[The prepared statement of Mr. Gibson follows:]

STATEMENT OF BILL GIBSON

BEFORE THE SENATE SUBCOMMITTEE ON THE HANDICAPPED AND
SUBCOMMITTEE ON EDUCATION, ARTS AND THE HUMANITIES
ON
S. 2568, May 24, 1984, "Civil Rights Act of 1984"

Mr. Chairman and members of the committee. My name is Bill Gibson. Thank you for this opportunity to provide testimony on the impact of §504 of the Rehabilitation Act of 1973 on me personally and on other disabled people in the State of Utah. I am currently a rehabilitation counselor. I held a sub-contract from the federal government to provide technical assistance on §504 to disabled people, parents of disabled children and recipients in Utah, Nevada and New Mexico. I have also served as a placement officer at Weber State, assisting disabled students to secure employment. From both my personal and professional experience I can say without equivocation that §504 has been the single most important piece of legislation for disabled people. The idea that a recipient of federal money would only be required to comply with §504 in some of its programs and not others would undermine the effectiveness of §504 and would certainly send a discouraging message to the millions of disabled people who have depended on this law for their claim to participate and belong.

I am especially pleased to be here today and to thank Senator Orin Hatch for his dedicated work and commitment to the disabled residents of Utah. I had the honor of serving on the Utah Advisory Committee for the Handicapped which has worked closely with the Senator. Your support of §504, P.L. 94-142 and other disability laws Senator, has been instrumental in bringing about needed changes in Utah and throughout the country and I hope we can expect your support on the matter at hand today.

I would like to begin by telling you about myself. I have been almost totally blind since birth. Neither retina is fully developed and I have scarring of both retinas as well. Although I am not completely blind, the vision I do have cannot be measured. I am able to count the number of fingers held in front of my right eye but I do not have that much vision in my left eye. I am unable to read print.

I attended the Utah School for the Blind from age 6 to age 17; a total of eleven years. At the age of 17 I began attending public high school. I can honestly say that the opportunity to attend public school was the best thing that ever happened to me. I began to feel like I belonged in my community and I was accepted by people my own age. The experience made me realize that I had choices in my life and I could really pursue them.

In 1971, at the age of 19, I enrolled in Weber State College in Ogden, Utah. At that time there were about 12 disabled students enrolled on the campus. Services to students at that time were very sparse. The Student Counseling Center was available to provide personal and academic counseling and referral of disabled students to community services but little else was available at that time. Although Weber State was a relatively new campus, there were many architectural and program barriers with which to contend. Students were sometimes forced to make academic selections on the basis of which classroom buildings were accessible or which academic program would not require some adaptation or modification.

During the mid-1970's, after the enactment of §504 of the Rehabilitation Act of 1973 and before the regulations were signed

in 1977, Weber State College began to realize that disabled students were increasing in number. Momentum had begun in response to changing attitudes and increased student needs certainly but also because the federal government would soon require that disabled students be accommodated. After the promulgation of §504 regulations major changes began to happen at the school. One of the most notable was the removal of a large number of architectural barriers. The library, which had posed very difficult access problems, was ramped. When a new wing for the library was planned, it was planned with accessibility in mind. Several major classroom buildings were ramped and external barriers to access caused by the hilly terrain on which the school was built were removed.

Even more important than the removal of physical barriers was the removal of attitudinal and program barriers. Academic programs began to open up that had previously been closed to disabled students. Science courses which blind and physically disabled students had been unable to take before became accessible. By accessible I mean lab benches were devised and installed so physically disabled students could reach and manipulate the laboratory equipment and aids and readers were provided to assist blind and visually-impaired students. Teachers and instructors began accommodating disabled students by arranging for extended exam times or other modifications. As a measure of the success of both §504 implementation and student and staff advocacy, there were over 175 disabled students attending Weber State College when I left two years ago. Other colleges and Universities in Utah have also made modifications in their programs as a result of §504. Student enrollment has similarly increased in colleges throughout the state.

The reason §504 has worked so successfully at Weber State, the University of Utah, Utah Technical College and other schools in Utah is because of the flexibility of the implementing regulations. The concept of program accessibility for example, enabled many schools, including Weber to modify or relocate classes, class sites or laboratories to meet the needs of individual students. Reciprocity between departments enables students and staff to achieve accessibility by sharing or trading classroom space if relocation is necessary and by arranging class schedules according to accessible, available space. Recipients have realized that many of their practices unintentionally had the effect of excluding disabled people and policy decisions now take the effect on disabled students into consideration.

I eventually earned a B.A. in communications and Public Relations from Weber State and a M.A. in Special Education from the University of Utah. The assistance I received in terms of readers and notetakers, brailed and taped materials, test adaptations and other related assistance was essential to the completion of my professional degrees. The level of accommodation to my disability, I believe, was provided because the school worked as a whole to make those accommodations possible. Had any individual department been excused from working as part of the team, the accessible attitudinal and architectural environment which §504 fostered would not have been present.

The flexibility and cooperation which is promoted by the regulations would be seriously undermined if the Grove City holding that some programs of a recipient can discriminate were to prevail. This is true not only in the area of higher education but in all areas under §504--health, primary and secondary education, employment, etc. Disabled people depend on Congress to set the tone of equality and integration for disabled Americans.

Therefore, I urge you Mr. Chairman and members of the committees to give S.2568 your most serious consideration. The future of disabled people depends on it.

Senator STAFFORD. We want to thank all members of this panel.

Senator Pell, do you have any questions of this panel?

Senator PELL. No questions, and I am very conscious of the witnesses that are still to come.

Senator STAFFORD. Thank you.

Senator Nickles?

Senator NICKLES. I have no questions. I do appreciate the panelists and their thoughts on this legislation.

Senator STAFFORD. All right.

Senator PELL. Mr. Chairman, I think it should be noted that Mr. Gibson was reading entirely from Braille as he was doing his testimony.

Senator STAFFORD. I think it was a remarkable achievement, and I also appreciate it. For both subcommittees, we are very grateful to all three of you for appearing here this morning. Thank you very much.

Ms. MAYERSON. Thank you.

Senator STAFFORD. The next panel we would ask to come to the witness table: Ms. Marcia Greenberger, attorney, National Women's Law Center; Dr. Carole Oglesby, professor of physical education, Temple University, and codirector of the New Agenda for Women in Sports, U.S. Olympic Committee, Women's Sports Foundation; and Ms. Christine Walters, president-elect, National Association of Girls and Women in Sports.

The Chair notes that we have two more panels to go, so once again we apologize for the compressions of time which always leave us and witnesses with insufficient time. We appreciate all the effort and work you go to in coming here and we just wish we had more time. But the traffic light is there and I am in the unhappy position of having to enforce it.

So, Ms. Greenberger, we will go to you first.

STATEMENT OF MARCIA D. GREENBERGER, ATTORNEY, NATIONAL WOMEN'S LAW CENTER; CAROLE OGLESBY, PROFESSOR OF PHYSICAL EDUCATION, TEMPLE UNIVERSITY, AND CODIRECTOR, NEW AGENDA FOR WOMEN IN SPORTS, U.S. OLYMPIC COMMITTEE, WOMEN'S SPORTS FOUNDATION; AND CHRISTINE WALTERS, PRESIDENT-ELECT, NATIONAL ASSOCIATION FOR GIRLS AND WOMEN IN SPORTS

Ms. GREENBERGER. Yes. Thank you very much, Senator Stafford. I will assume that my statement will be inserted in the record in full.

Senator STAFFORD. We will say that all statements of all witnesses, and I will make this a blanket statement right now, will, without objection, be placed in the record in full as if read.

Ms. GREENBERGER. Thank you, and I will summarize my remarks briefly.

I am pleased to be here today to urge the quick passage of S. 2568 to assure that we have strong laws prohibiting discrimination on the basis of race, national origin, sex, disability, and age.

Title IX has meant significant improvement in the educational opportunities available to women and girls in this country, and my

testimony goes through some of the severe forms of discrimination that women and girls have faced.

My testimony also discusses the many issues left and the much work that still remains to be done. The disparities, for example, between the vocational opportunities given to young men and women are really staggering, and there are some, I think, quite dramatic and disturbing statistics in my testimony that show how stereotyped the job training opportunities are for women and men.

What the *Grove City* decision means to title IX is that the strong law that we all thought we had and took pride in and relied upon may no longer be an available remedy to many of the forms of discrimination that women and girls still face.

S. 2568 restores the law to its former strength. It puts the four civil rights laws back to where they were before *Grove City* was decided. It does nothing more and it does nothing less.

I have heard quite a bit of comment about the importance of making sure that the legislation is drafted in a clear manner to avoid confusion in the future, and I did want to address that point.

But before I did, I wanted to make one comment about how a majority of the Supreme Court could decide *Grove City* as it did in light of what was really quite overwhelming, longstanding agency interpretation and congressional statements of intent as to broad coverage and scope of enforcement.

I think it is important to keep in mind that all of the information in my written remarks as well as many others that have been submitted, and I am sure will be submitted, were not, in fact, presented to the Supreme Court.

The two opposing parties were *Grove City College* and the Government. Once the Government switched its position in the Supreme Court, neither side supported the view that institution-wide coverage was intended by title IX and the Government refused to support a request that those who did support institutionwide coverage be given the opportunity to make those arguments before the Supreme Court.

So they really did not have the overwhelming information that we have before us today when they made this decision.

I wanted to talk now about why prompt action is needed as well. I have attached to my written comments some letters that have been sent out since the *Grove City* case was decided by the Office for Civil Rights, closing down cases, closing down investigations and, in fact, in instances where discrimination had been found.

So, in response to some of the remarks of the Senators earlier this morning who urged care and not moving very quickly and the fact that there had not been allegations of discrimination, in fact, we see, and I have attached, clearcut examples of schools who today are discriminating. The Office for Civil Rights has found that they are discriminating, and they are receiving Federal dollars with impunity while they continue this discrimination.

Senator STAFFORD. You had better summarize, Ms. Greenberger.

Ms. GREENBERGER. I also wanted to, in summary, make the point that, in fact, this language is very clear and I think it is drafted in as clear a way as the English language can be. The word "recipient" is included in the legislation because it has been defined in the regulations, because we have 20 years of administrative history

to look back on as to how it has been enforced, so that we do have certainty there.

Each word change brings with it enormous experience, and I cannot see how any language could be clearer than that which this bill provides.

Thank you.

[The prepared statement of Ms. Greenberger, with attachment, follows:]

STATEMENT

OF

MARCIA D. GREENBERGER
NATIONAL WOMEN'S LAW CENTER

Mr. Chairmen and members of the Subcommittees, I am Marcia Greenberger, an attorney with the National Women's Law Center. I am pleased to be here today to urge the quick passage of S. 2568. This legislation is needed to assure that we have strong laws prohibiting discrimination on the basis of race, national origin, sex, disability and age. However, because I have worked particularly in the area of sex discrimination, my testimony will be directed toward the Title IX aspects of the bill. Nonetheless, I do want to note that women face discrimination not only because of their gender, but also on the basis of race, national origin, disability and age. Given the overlapping nature of discrimination, and the similarity of approach of the statutes, all aspects of this bill are of critical importance and are properly addressed together.

In 1972, Rep. Patsy Mink summed up the compelling need for Title IX. Her words are as true today as they were 12 years ago:

> "Any college or university which has [a] . . . policy which discriminates against women applicants . . . is free to do so under [Title IX] but such institutions should not be asking the taxpayers of this country to pay for this kind of discrimination. Millions of women pay taxes into the Federal treasury and we collectively resent that these funds should be used for the support of institutions to which we are denied equal access." 118 Cong. Rec. 5806-5870 (1972)

Since 1972, we have worked on issues of sex equity in education, with a particular emphasis on Title IX to assure fair treatment of women and girls. I have been co-counsel for parties or represented amici curiae in many of the Title IX cases which have been brought in the courts. In particular, I was co-counsel representing the American Association for University Women

(AAUW), et al. in the Grove City College v. Bell case in the Third Circuit Court of Appeals and in the Supreme Court. In fact, the Third Circuit opinion cited to and relied upon the brief filed by AAUW in support of its holding that student aid brought the entire school within the scope of Title IX.

The Supreme Court's reversal of the Third Circuit's holding on this point, and the Supreme Court's acceptance of a narrower interpretation of the scope and coverage of Title IX, seriously impair the law's effectiveness as a tool to end sex discrimination in education. Given the fact that Title IX is the only federal law which protects both students and employees in education, its weakening is particularly serious.

Title IX Has Made Important Headway in Combating Sex Discrimination in Education, But Much Discrimination Remains

Title IX has made a real contribution towards sex equity in education. I remember when I first began to work on these issues I was asked to review the Strong Vocational Interest Blank test, which was in use around the country to assist in counseling students as to future careers. At that time, the girls were given pink sheets asking their interests in a limited set of careers stereotyped as "women's jobs." I remember in particular a question on whether the girl taking the test would want to be wife of the President of the United States. I wondered then how one prepared for that career if the answer was yes. The boys were given blue sheets, where higher paying jobs were suggested. The question they were asked was whether they wanted to be President. With the passage of Title IX, the separate

tests were eliminated. Our girls must now be given career options which are as broad and as varied as those presented to our boys.

Title IX has meant many other important things as well. It has opened up scholarships, particularly in the area of athletics, so that young women have a chance to secure a higher education through their athletic ability. It has provided an awareness of the problem of sexual harassment in schools, and a mechanism for dealing with the problem. It has opened the door of many graduate professional programs such as law and medicine to women.

But much remains to be done. For example, we still see enormous disparities between the vocationl opportunities given to young men and women. Vocational education enrollment remains highly sex-segregated and sex-stereotyped, mirroring the employment patterns in the workforce. In 1980, within federally-funded vocational programs women were concentrated in traditionally female course areas of home economics, health, office occupations, and consumer and homemaking programs; men dominated agricultural, technical, trade and industrial programs. League of Women Voters Education Fund, Achieving Sex Equity in Vocational Education 4 (1982). Recent progress in enrolling women in a more varied range of options has been most evident in those areas which are least sex-stereotyped as male or female, or which are considered male domains but viewed as "light" and "clean" work -- graphic arts, applied design and electronic accounting. Id. at 13.

The following chart from the report of the National Advisory Council on Women's Education Programs, Increasing Sex Equity 1980 Update 6 (1982), summarizes the enrollment patterns of women in vocational education programs in recent years:

Women Enrolled in Nontraditional, Mixed, and Traditional*/ Vocational Programs by Occupational Training Area and Year, United States

	1972	1976	1978	1980
		(percent)		
Nontraditional: Total	5.4	8.8	11.1	12.5
Trade and Industry	5.4	7.8	9.5	10.2
Agriculture	3.9	9.6	13.1	16.6
Distributive Education	14.6	23.4	16.7	17.2
Technical	8.6	12.2	16.7	19.0
Mixed: Total	50.5	51.8	55.7	59.0
Trade and Industry	40.6	38.0	46.7	53.0
Agriculture	26.9	40.5	45.0	44.6
Distributive Education	46.3	48.7	52.2	55.9
Health	63.2	56.1	57.7	69.8
Business	56.8	57.1	60.5	61.5
Technical	31.8	46.6	46.2	51.5
Traditional: Total	86.7	85.8	85.7	86.7
Trade and Industry	87.1	85.1	86.2	89.6
Health	90.9	89.2	89.3	91.6
Home Economics	86.1	84.7	82.5	80.7
Business	86.0	85.4	85.6	86.3

*/ Definitions of nontraditional, mixed, and traditional programs are based on the percentage of women enrolled in vocational education courses nationally in 1972. Nontraditional programs are those in which the enrollment of women in 1972 was 0.0 to 25%. Mixed programs are those in which the enrollment nof women in 1972 was 25.1% to 75.0%. Traditional programs are those in which the enrollment of women in 1972 was 75.1% to 100%.

SOURCE: Based on 1972-1978 data from U.S. Department of Health, Education, and Welfare, Bureau of Occupational and Adult Education (BOAE); 1980 data from U.S. Education Department, National Center for Education Statistics, Vocational Education Data System (VEDS).

The least progress has been seen in the buiding trade areas -- for example masonry, electricity and plumbing -- in which few women enroll, and fewer yet complete the program. Id. at 14.

As of 1980, enrollment of women in none of the following thirteen categories exceeded five percent:

Program	Percent
Air Conditioning	2.7
Body and Fender Repair	3.0
Auto Mechanics	4.6
Carpentry	4.5
Masonry	2.3
Plumbing and Pipefitting	2.7
Diesel Mechanics	2.3
Electrical Occupations	3.9
Sheet Metal Occupations	3.7
Tool and Die	4.2
Other Metalworking	4.7
Fire Fighter Training	4.8
Small Engine Repair	4.0

Increasing Sex Equity 1980 Update, supra, at 7.

We see wide gaps in the athletic scholarships given to men and women, and in fact one recent study shows a gap in general

student aid going to women and men.*/ We see little progress in employment of women in education in the better paying jobs and higher ranks. Title IX is needed as much as ever, not only to retain the gains we have made, but to secure continued progress that women in this country deserve.

The Grove City Decision Seriously Narrows Title IX's Effectiveness, Both With Respect to Coverage and Enforcement

Under the Grove City case, the receipt of federal student aid was considered to cover only the college's financial aid program. Therefore, Grove City College is free to discriminate against students in its math or science program, yet so long as the financial aid program is not discriminatory the federal student dollars can flow with impunity to its general fund, supporting all of the college's activities including its math and science departments.

The effects of this narrowing are beginning to be felt. The Department of Education has begun to close complaints and narrow interpretations, even where discrimination has been found, on the grounds that in its view after the Grove City decision Title IX no longer prohibits the discrimination. Copies of some of the Department of Education letters are attached to my statement. They are a graphic demonstration of the loss of protection women and girls have suffered when Grove City College was decided.

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*/ Moran, Mary, Student Financial Assistance: Next Steps to Improving Education and Economic Opportunity for Women, soon to be available from ERIC Clearinghouse on Higher Education and from the Association for the Study of Higher Education, Washington, D.C.

S. 2568 Restores the Law to Its Former Strength

S. 2568 puts the four civil rights laws back to where they were before Grove City was decided. It does nothing more and nothing less.

By requiring "recipients" of federal funds to comply with the nondiscrimination provisions, the bill assures that when an entity receives federal funds, it must not discriminate in any of its parts. The bill then adds a definition of "recipient" drawn from current regulations, and followed in the first part of the Grove City decision. Through these changes, the bill will eliminate the possibility of further confusion. The definition of recipient makes clear that an institution like Grove City is covered in its entirety.

The approach of covering the entire institution is clearly consistent with what Congress intended when passing Title IX. When Title IX was pending, Representative Green explained:

> "The purpose of title [IX] is to end discrimination in all institutions of higher education. Yes, across the board. . . ." 117 Cong. Rec. 39256 (1971)

And it was only with such across the board coverage that Title IX could be the "strong and comprehensive measure" Senator Bayh described and clearly intended the law to be. 118 Cong. Rec. 5804 (1972)

Moreover, by modeling Title IX after Title VI of the 1964 Civil Rights Act, Congress adopted and approved a statutory scheme which had been interpreted to be strong, providing across-the-board coverage. Not only agency regulations and enforcement, but case law decided before Title IX was passed confirmed this

broad approach under Section 601 of Title VI. See e.g. United States v. Jefferson Co. Board of Education, 372 F.2d 836 (5th Cir. 1966), aff'd en banc, 380 F.2d 385, Cert denied sub nom Caddo Parish Board of Education v. United States, 389 U.S. 840 (1967); Bossier Parish School Board v. Lemon, 370 F.2d 847 (5th Cir.), cert. denied, 388 U.S. 911 (1967); Board of Public Instruction of Taylor Co. v. Finch, 414 F.2d 1068 (5th Cir. 1969).

The enforcement sections of Title VI and IX (Sections 602 and 902) were also designed with care. Government agencies providing federal funds are obligated to provide an enforcement scheme which includes fund termination in the event that efforts to conciliate fail, or referral to the Justice Department for a court suit to secure the end of the discrimination. Where fund termination is used, the government is obligated to "pinpoint" the funds terminated. The "pinpoint" obligation was defined in Taylor County v. Finch, supra, decided under Title VI before Title XI was passed. Under Taylor County, funds could be terminated if those funds "support" the discrimination. That test of support is now maintained by this bill.

Moreover, since Title IX was passed, Congress has consistently refused to narrow its scope. As was true for Title VI, HEW promulgated regulations tracing the Title VI approach and broadly interpreting the scope of Title IX. See 34 C.F.R. Part

106. The regulations were approved by the President and sent to Congress for review.*/

Congressman O'Hara held six days of hearings on the Title IX regulations. He described the hearings as designed to determine "whether or not the regulations as they are written are consistent with the law, or whether they should be returned to the agency for redrafting until they are consistent with the law from which they must draw their authority." Hearings on Title IX Before the Subcommittee on Postsecondary Education of the House, Committee on Education and Labor, 94th Cong., 1st Sess. 97 (1975). Proposed concurrent resolutions that would have disapproved the regulations were not approved by either House of Congress.

Congress has also consistently refused to approve express efforts to limit the coverage of Title IX to programs and activities directly receiving federal funds. One such effort was an amendment introduced by Senator Helms in 1975. He explained:

> ["t]he bill provides that Title IX shall apply only to education programs and activities which directly receive federal financial assistance....

122 Cong. Rec. 23846 (1975) (emphasis supplied). Senator Helms' bill was not passed.

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*/ Pursuant to the General Education Provisions Act, 20 U.S.C. §1232, Title IX regulations could not become effective until Congress has had 45 days to review the regulations and to reject them. Although the statute was later amended to provide that failure to disapprove regulations did not constitute a finding of consistency with the underlying legislation, see 20 U.S.C. §1232(d), the regulations were finalized before the law was so amended.

Given these overwhelming indications of Congress' intent to create a broad-reaching statute, one might well ask how a majority of the Supreme Court decided Grove City as it did. In fact, it is important to keep in mind that this information was never presented to the Court by either party in the case. The two opposing parties were Grove City College and the government. Once the government switched its position in the Supreme Court, neither side supported the view that institution-wide coverage was intended by Title IX. Moreover, the government refused to support a petition to the Court that third parties be given time to present arguments in favor of institution-wide coverage to the Supreme Court. Therefore, the Court decided this most critical of issues without hearing from anyone who supported the original long-standing position of the government.

Prompt Action Is Needed

It is important that this bill move quickly, to clarify that indeed broad coverage and effective enforcement is required. We have seen the Department of Education begin to close cases and narrow its efforts. Federal dollars will now be flowing to institutions which even the Department of Education has found to discriminate. Moreover, the amounts of federal dollars at issue are enormous. When Title IX was promulgated, the House Report listed many categories of federal financial assistance covered by the statute. H.R. Rep. No. 5544, 92nd Cong., 1st Sess. (1971), reprinted in [1972] U.S. Code Cong. & Admin. News 2462. From Basic Education Opportunity Grants to Graranteed Student Loans to construction monies to myriad grant and contract programs, the

list was long. All of these categories still exist, and many new funding programs have been added.*/

That billions of dollars could be used to support discrimination is simply unacceptable. The rights of women, minorities, disabled persons and older Americans depend on Congress' speedy action to correct this terrible wrong.

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*/ The District Court in Grove City College held that Guaranteed Student Loans are federal financial aid to schools but are not federal financial assistance subject to government enforcement under Title IX on the grounds that they fit within the statutory exception of contracts of insurance or guaranty. Because the GSL program provides a substantial interest subsidy as well as special allowance payments in addition to the guaranty, all past administrations correctly took the position that the GSL program goes beyond the exemption and is included. However, the Justice Department dropped the appeal on this issue originally taken by the government, so that the Grove City College case ultimately dealt only with Basic Education Opportunity Grants. See Hearings Before the Committee on Education and Labor, Subcommittee on Postsecondary Education, House of Representatives concerning Guaranteed Student Loans on May 13, 1982.

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF THE ASSISTANT SECRETARY FOR CIVIL RIGHTS

MAR 6 1984

Dr. Bryce Jordon
President
The Pennsylvania State University
201 Old Main
University Park, Pennsylvania 16802

Dear Dr. Jordon:

The Office for Civil Rights (OCR) advised you on February 23, 1982 and April 14, 1982 of its decision to investigate the complaint against The Pennsylvania State University (Penn State) filed by Mr. Timothy K. Conley on behalf of the Women's Soccer Club under Title IX of the Education Amendments of 1972. In letters dated March 18, 1982 and May 6, 1982 Penn State declined to participate in the proposed investigation pending judicial or executive clarification of whether Title IX is applicable to a program or activity which is not the recipient of Federal funds.

In light of the recent Supreme Court decision in Grove City College v. Bell, it appears that OCR does not have jurisdiction to investigate the complaint of sex discrimination in Penn State's athletic program. We are, therefore, closing the above referenced complaint.

Sincerely,

Harry M. Singleton
Assistant Secretary
for Civil Rights

EXHIBIT B

U.S. DEPARTMENT OF EDUCATION
3535 MARKET STREET P.O. BOX 13716
PHILADELPHIA, PENNSYLVANIA 19101

REGION III

OFFICE FOR
CIVIL RIGHTS

Our Ref: 03770308
03812028

MAR 08 1984

Dr. John Toll, President
University of Maryland College Park
College Park, Maryland 20742

Re: Title IX Intercollegiate
Athletics Compliance Review

Dear Dr. Toll:

By letter dated February 23, 1984, the Office for Civil Rights sent the University of Maryland College Park (UMCP) a statement detailing those aspects of its intercollegiate athletic program which we had concluded violated Title IX of the Education Amendments and its implementing regulation at 34 C.F.R. Section 106.41(c). These areas had been identified previously for the University and were discussed at a meeting with UMCP officials and representatives on January 24, 1984.

On February 27, 1984, we received a letter from Assistant Attorney General Frederick G. Savage, on behalf of UMCP, responding to the concerns that OCR and UMCP representatives had discussed at the January 24, 1984 meeting. This letter set forth actions already taken and planned to be taken by the University in the areas of travel, provision of locker rooms, recruitment, support services, and the accommodation of student interest.

Since receiving Mr. Savage's letter, we have carefully reviewed our records of Federal financial assistance to UMCP's athletic program. We have concluded that we do not have jurisdiction to pursue this matter further, since the outstanding issues do not concern the operation of UMCP's athletic financial assistance program, which we found to be in compliance with Title IX and 34 C.F.R. Section 106.37(c). We remain available to provide members of your staff with technical assistance in the area of intercollegiate athletics, upon request.

I would like to thank you and your staff for the courtesy and cooperation extended during the course of this review.

Very truly yours,

for Dewey E. Dodds, Director
Office for Civil Rights
Region III

cc: Frederick G. Savage

AUG 1 ? 1983

Dr. Wilford S. Bailey
Acting President
Auburn University
Auburn, Alabama 36849

Dear Dr. Bailey:

Re: Docket Number 04-81-2005

By a letter dated July 2, 1981, the Office for Civil Rights (OCR) of the Department of Education (formerly of the Department of Health, Education and Welfare) informed you that it planned to conduct an investigation of the above referenced complaint alleging discrimination on the basis of sex in the intercollegiate athletic program. The complaint alleged that the University is not accommodating the interests and abilities of its female students as required by the Title IX Regulation. In addition, the complaint alleged sex discrimination in the provision of athletic-based financial assistance, the assignment and compensation of coaches, the provision of locker rooms, practice and competitive facilities, the provision of trainers, recruitment, the provisions for travel and per diem, housing, and publicity.

Section 901(a) of Title IX of the Education Amendments of 1972, 20 U.S.C. Section 1681 (hereinafter cited as Title IX), provides:

> No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

In addition, the provisions of HEW's implementing regulation for Title IX, 34 C.F.R. Part 106, which became effective on July 21, 1975, and was adopted by the Education Department on May 9, 1980, set forth specific requirements regarding intercollegiate athletics (copy enclosed). Athletic scholarships are addressed at 34 C.F.R. Section 106.37(c). The general prohibition of discrimination on the basis of sex in intercollegiate athletic programs is addressed at 34 C.F.R. Section 106.41.

Because the Title IX regulation established separate legal standards for the provision of equal athletic opportunity in program areas other than financial assistance, OCR has assessed compliance with the two sections of the regulation individually.

As a means of assessing compliance, we have followed the directions provided in the Policy Interpretation issued by the Department of Health, Education, and Welfare on December 11, 1979. 44 Fed. Reg. 71413 et seq. (1979).

In assessing compliance with Section 106.37, OCR considered 1) whether the total amount of athletic scholarship aid available to male and female athletes was substantially proportionate to their rates of participation in intercollegiate athletics; and 2) whether different types of non-grant athletic assistance were proportionately available to male and female athletes.

We assessed compliance with 34 C.F.R. Section 106.41(c) by reviewing the overall intercollegiate athletics program. We reviewed the ten factors listed in the regulation plus the recruitment of student athletes and the provision of support services. (As explained in the Policy Interpretation, the regulation authorizes OCR to consider factors other than those listed in the regulation.)

In each program area we examined whether the availability, quality and kinds of benefits, opportunities and treatment provided were equivalent for both sexes. Equivalent is defined as equal or equal in effect. It is important to note that we compared the men's program and the women's program on an overall basis, rather than on a sport-by-sport basis that would pair, for example, men's basketball and women's basketball. Where disparities were noted, we considered whether the differences were negligible. Where the disparities were not negligible, we determined whether they were the result of nondiscriminatory factors. Finally, we determined whether disparities resulted in the denial of equal opportunity to male or female athletes, because the disparities collectively were of a substantial and unjustified nature, or because the disparities in individual program areas were substantial enough in and of themselves to deny equality of athletic opportunity.

The regulation at 34 C.F.R. Section 106.41(c) provides that "unequal aggregate expenditures for members of each sex or unequal expenditures for male and female teams if a recipient operates or sponsors separate teams will not constitute noncompliance with this section, but the Assistant Secretary may consider the failure to provide necessary funds for teams for one sex in assessing equality of opportunity for members of each sex." Where appropriate, we have considered the level of funding for men's and women's programs in assessing the equivalence of benefits and opportunities.

SUMMARY OF FINDINGS

Athletic Financial Assistance

In 1981-82, Auburn awarded 83% of all financial aid based on athletic ability to men and 17% to women. Men comprised 75% of all participants while women

comprised 25% (1981-82) of all participants. OCR determined that the differences in these awards were significant and finds that Auburn University is not in compliance with 34 C.F.R. Section 106.37(c).

Other Program Areas

OCR finds that Auburn University is providing male and female athletes equivalent treatment, benefits and opportunities in the following areas: provision and maintenance of equipment and supplies, scheduling of games and practice times, opportunity to receive academic tutoring and assignment and compensation of tutors, provision of medical and training facilities and services, provision of housing and dining facilities and services, publicity, and provision of support services.

OCR found that benefits, opportunities and treatment were not equivalent in the areas of travel and per diem allowances, coaching, the provision of locker rooms, practice and competitive facilities, recruitment of student athletes, and the accommodation of interest and abilities.

Enclosed is a Statement of Findings which provides a more complete description of the general background, scope and method of investigation of the review. It states the factual findings of the investigation and describes the bases for the conclusions. The report is divided into two principal parts: Athletic Financial Assistance and Other Program Areas.

This letter of findings addresses only the issues listed above and should not be interpreted as a determination of Auburn University's compliance or noncompliance with Title IX in any other respect. It should be emphasized that the findings and conclusions in this letter and the attached Statement of Findings are based on the applicable provisions of the Title IX implementing regulations and the Policy Interpretation described above.

You are requested to submit a plan to correct the violations of Title IX within 7 days. After receipt of the plan, there will be an evaluation period during which we shall communicate with you or your representatives, as necessary, regarding clarifications or modifications of the plan. After this evaluation period, OCR must either accept the plan or initiate enforcement proceedings. We are compelled to adhere to specific timeframes in resolving a case by an Order of the U.S. District Court of the District of Columbia, dated March 11, 1983. OCR is available to assist you in developing an acceptable corrective plan.

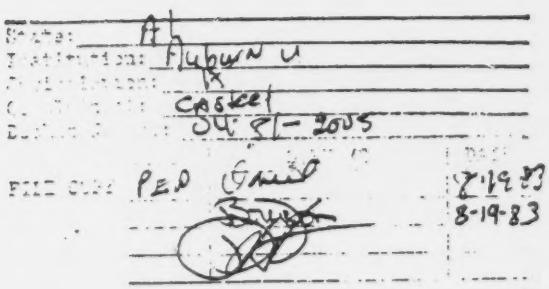
The Freedom of Information Act requires that the Office for Civil Rights release this letter and other information about this case upon request by the public. In the event that OCR receives such a request, we will protect information that identifies individuals or that may constitute an invasion of privacy, and will inform the University if we are compelled to release information.

We wish to thank you and your staff for the cooperation shown throughout this matter. If you have further questions, please do not hesitate to call me at (404) 221-2954, or Louis O. Bryson, Sr., Director, Postsecondary Education Division, at (404) 221-2970.

Sincerely yours,

William H. Thomas
Director

Enclosures



Senator STAFFORD. All right, thank you very much.

Dr. Oglesby, we will be glad to hear from you.

Dr. OGLESBY. Thank you, Senators and honored guests.

Senator STAFFORD. Can you pull the mike up a little more directly? These are terrible mikes that we have here in this building.

Dr. OGLESBY. Recognizing that the reach of S. 2568 is well beyond title IX only, and title IX itself touches all aspects of education, including sport and physical education, I want to state that my remarks will be about sport and physical education only because of my background and not because of the lack of importance of those other issues; 2½ years ago, the Women's Sports Foundation and the U.S. Olympic Committee committed to joint sponsorship of a massive conference to develop a blueprint for the future of women's sport and fitness in the United States.

This conference, entitled "The New Agenda," was held in Washington, DC, in November, with 600 delegates representing thousands of men and women concerned about sport and fitness for girls and women in the United States.

The sense of the Olympic Committee and the Women's Sports Foundation in the development of this conference was that a social process and change opening the benefits of sport and fitness to girls and women had been set in its initial motion, but was in jeopardy of a premature withering due to financial exigencies within a context that women's sport and fitness concerns were simply not important enough to justify enforcement of equity legislation, such as is required in title IX and other bills like the Amateur Sports Act.

The 600 delegates were not a collection of elite athletes, although that group was represented by people like Donna DeVerona, Carol Mann, Billie Jean King, Willie White, Madeline Manning Mims, and John Nabors.

The delegates represented parent groups and high school sport federations, media groups, business groups, physical educators, and coaches, national governing body representatives from the USOC, the aging, disabled, youth sport groups, and virtually every group having a vested interest in girls 'and women's sport.

Of the 120 resolutions adopted by this group, the No. 1 priority of the new agenda was the strengthening of title IX and its enforcement. Sport and fitness by tradition has been a masculine domain. Title IX ushered in a decade of unparalleled growth in the absolute numbers of girls and women involved in sport and fitness, but the barriers to this growth are still enormous.

We face, for example, a situation today where the coaching, officiating, and administrating of girls 'sport is increasingly dominated by men drawn to this area as it now is recognized. Until women are viewed as competent to coach and teach both boys and girls, as men are now viewed as competent to coach both girls and boys, the process of equity is not complete.

I speak, then, as an advocate for sport and fitness concerns for girls and women, and feel the need for the comprehensive kind of coverage such as title IX was initially viewed to provide as absolutely necessary.

Thank you.

Senator STAFFORD. Thank you very much, Dr. Oglesby. With that brevity of presentation, I am going to make you an honorary northern New Englander. [Laughter.]

Ms. Walters, we would be very glad to hear from you.

Ms. WALTERS. Thank you very much.

Mr. Chairman and members of the committee, my name is Christine Walters. By profession, I am a physical educator and I currently serve as president-elect of the National Association for Girls and Women in Sport.

I have taught and coached at the primary, secondary, and college level. I have been a primary women's athletic administrator at a George Mason University, and I currently conduct in-service workshops for physical educators and coaches who have been working very hard in the past 10 years to implement the title IX legislation through curriculum changes and through changes in their own teaching behavior, and through creating new programs.

We have coeducational physical education today because of title IX. Following the *Grove City* case, wherever I have traveled to do workshops I have found confusion and uncertainty as to what teachers are supposed to do today.

I find that more than 60 percent of the teachers wish to continue with coeducational physical education, but 40 percent of them, in their confusion, would like to go back to the safety of sex-segregated classes. We need some guidance and we need it very quickly.

There have been many benefits from coeducational physical education, as I am sure many of you know. Unfortunately, many parents still are not aware that our children are being taught in sex-integrated classes. This knowledge is just currently becoming common knowledge. I would hate to think that it would be changed so quickly.

There have been many benefits. Coeducational physical education has provided increased participation in the sports classroom and also in the sport field for girls and women. I am finding much more cooperation between men and women physical education teachers. Teachers who were instructed and went through college thinking that they would be teaching sex-segregated classes have today changed their teaching attitudes and their behaviors to have coeducational instruction. The classes have become coinstructional in many places, although as Ms. Greenberger has stated, there are still many places that have not had that luxury or that benefit.

The programs today are more varied and broader. Basketball, football, and baseball still are included in programs, but there are many more programs for fitness for life and sport for all.

I think that the opportunities for teachers have increased. We cannot limit ourselves to just one or two sports as coaches and teachers. I feel that the title IX legislation has encouraged this, but that in the confusion administrators are feeling that possibly it would be safer to go back to sex-segregated teaching. I put this out as an issue and a problem.

In addition, participation has soared for young girls. The National Association for Girls and Women in Sport's youth coalition has shown through their surveys that the numbers of girls have increased substantially. My question is, What is going to happen when they reach the secondary level and they still want the good

coaching and they still want programs, but they may not exist because of the *Grove City* case? People are confused; they need some clarity on the issue.

There has been a great erosion of women as coaches and administrators and as physical education teachers. I worked in two school districts that have two high schools with six physical educators in each high school and none of them are women. This lack of role models is a serious problem.

I come before you to let you know that the National Association for Girls and Women in Sport is extremely concerned about this; I personally am concerned. I ask on behalf of these groups that you support this legislation.

Thank you very much.

Senator STAFFORD. Thank you very much, Ms. Walters. I anticipate that members of the committee who are not able to be here—of the two committees, in fact—may have some questions in writing that they would submit, and your reply at your early convenience in the event that occurs would be much appreciated.

We thank you all, and especially for your cooperation in doing it, in each case, within 5 minutes. It reminds me that my maternal grandfather, who was a member of the clergy, used to say, but not in church, that few souls were saved after the first 5 minutes. [Laughter.]

Our next panel will be Ms. Althea Simmons of the NAACP, and Mr. Jake Ayers of Mississippi. Again, we will ask you, if you can, please, to terminate within 5 minutes.

Ms. Simmons, we will go with you first and then Mr. Ayers.

STATEMENT OF ALTHEA T.L. SIMMONS, DIRECTOR, WASHINGTON BUREAU, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, AND JAKE AYERS, OF MISSISSIPPI

Ms. SIMMONS. Mr. Chairman, I am Althea T.L. Simmons, Director of the NAACP's Washington bureau, and I appreciate the opportunity to appear before you today to represent our 1,800 branches in all 50 States and the District of Columbia.

We urge the committee and the Senate to vote for passage of S. 2568, the Civil Rights Act of 1984. It is our considered judgment that such action is needed to make it clear that the Congress intended broad coverage of title VI of the 1964 Civil Rights Act.

The *Grove City* decision has narrowed the scope not only of title IX, but title VI, the Age Discrimination Act of 1975, and section 504 of the Rehabilitation Act of 1973. There is no doubt in our mind that Congress intended to prohibit the use of Federal funds to discriminate.

This is a very simple bill, Mr. Chairman, although opponents of the measure and those who wish civil rights would go away have predicted all kinds of dire consequences and have hypothesized at great length. They have raised the specter of unnecessary intrusion, tension, and they have not really dealt with the real issue. The real issue is whether the Congress intended that Federal funds be used to discriminate.

Some of the questions that have been raised are whether or not the definition of "recipient" expands the law. Our response to that is

no. The definition does not expand it. It specifically excludes any ultimate beneficiary under any such program so that an individual Medicaid recipient or SSI recipient is not included; that is, the landlord whose tenant pays the rent with public-assistance funds, the clothing store that receives payment for merchandise with Social Security checks, the mom-and-pop grocery store that accepts food stamps.

By common practice, regulations, administrative procedures, and legislative history, the ultimate beneficiary has been exempt and the Federal Government has monitored programs with a substantial impact, such as a school-lunch program, rather than a mom-and-pop grocery store.

Another question that has been raised is whether or not funds received by an educational institution from a student receiving a guaranteed student loan would trigger coverage under the proposed legislation.

Under title IX, *Grove City College* would say, yes; under title VI, *Bob Jones* would say yes. By statute, contracts of insurance and guarantee are exempted under title VI. However, if the loan was not considered a contract of insurance or guarantee within the meaning of the statute, it would be covered.

Further question has been raised with reference to whether a local police department recipient of Federal funds found to discriminate on the basis of race would jeopardize Federal funds for the fire department or other agencies of the local governmental entity, and thus be subjected to fund termination, although there was no discrimination in the fire department.

The answer is "No," unless there was a nexus found on the record between the police department and the fire department.

Let me say, Mr. Chairman, that a lot of talk has been given to fund termination. However, it should be clearly understood that fund termination is the ultimate, extreme sanction and that a number of other steps must be taken before you get to fund termination.

And we in the civil rights community believe that in the course of the past 20 years, not enough fund termination has taken place. So I do not think the Congress should be unduly concerned about the misuse of fund termination.

I suppose the ultimate question would be, why should those of us who are concerned primarily about title VI want to be included in a bill with the rest of the laws. We believe that where civil rights is concerned, Mr. Chairman, that a narrowing of one civil rights narrows all the rest of them. Therefore, we decided that this is a case where we must step in and urge the Congress to act speedily.

Thank you, Mr. Chairman.

[The prepared statement of Ms. Simmons follows:]

TESTIMONY OF

ALTHEA T. L. SIMMONS

DIRECTOR, WASHINGTON BUREAU

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

Mr. Chairman and members of the Committee, I am Althea T. L. Simmons, Director of the Washington Bureau, National Association for the Advancement of Colored People, an organization of 1800 branches, youth and college chapters celebrating its 75th Anniversary in the field of civil rights. We are here today in support of S. 2568, the Civil Rights Act of 1984, which will re-affirm the American principle that "simple justice" mandates that federal assistance shall not be used to support unlawful discrimination on the basis of race, national origin, color, sex, age or disability.

Mr. Chairman, yesterday, both the Judiciary and Education and Labor Committees of the U. S. House of Representatives passed unanimously, without amendment, H.R. 5490, the companion bill to S. 2568. We support the expeditous passage of S. 2568 as the necessary response to the February 28, 1984 United States Supreme Court decision in Grove City College v. Bell which case adversely effects Title IX of the Education Amendments of 1972, Title VI of the Civil Rights Act of 1964, the benchmark legislation, Section 504 of the Rehabilitation Act of 1973 and the Age Discrimination Act of 1975. The decision in Grove City College narrowed the prohibition against sex discrimination by holding that the anti-discrimination provisions reached, not the entire college, but only the financial aid office. This decision has ramifications for similar narrow findings in all civil rights cases.

Title IX was expressly modeled after Title VI of the Civil Rights Act although Title IX was limited in its application to educational programs or activities receiving federal financial assistance. This committee must note Title VI is not so limited, as to apply only to education. With few exceptions, such as for contracts of loan or guaranty, (42 U.S.C. 2000 d-1) or employment practices where the primary objective of federal financial assistance is to provide employment, (42 U.S.C. d-3), Title VI broadly prohibits the use of federal assistance to support illegal discrimination.

Coverage

Senator Hubert H. Humphrey stated that the purpose of Title VI is to codify the law of the land. 110 Cong. Rec. 5252 (1964). Quoting the June 19, 1962 message to Congress of President John F. Kennedy, he stated:

> Simple justice requires that public funds to which all taxpayers of all races contribute, not be spent in any fashion, which encourages, subsidizes or results in racial discrimination. 110 Cong. Rec. 6543 (1964).

For twenty years, through Republican and Democratic administrations, it has been clear that Title VI implements the policies and laws of the United States as expressed in the 14th Amendment to the Constitution and the Civil Rights Acts of the late 19th century: unlawful discrimination will not be supported by the federal government.

The scope of coverage of necessity was broad. The regulations implementing the Civil Rights Act of 1964 were often and unsuccessfully challenged. The broad powers to investigate allegations of discrimination or compliance were upheld. Bob Jones University v. United States, 396 F. Supp. 596 (1974); United States v. El Camino Community College District, 600 F. 2d 1259 (9th Cir. 1979). Even Grove City College held that the college must sign the assurance of compliance form.

As Bob Jones and Grove City College illustrate, the civil rights laws cover both direct and indirect recipients of federal financial assistance.

Similarly, it is well established that there is a right to a private cause of action under Title VI, Title IX, et. al.

The purpose of these statutes, we must remember, is to encourage voluntary compliance with our values of equality of opportunity and access and to deny federal support for unlawful inequality.

The cases illustrate the purpose and effect and need for the Civil Rights laws.

The school desegreation cases show the vainglorious history of our country to end dual, separate and inherently unequal education in America. The "recipient" in each case varies with the facts of the case, for example, some states began "massive

resistence" to desegregation by various devices including the closing of public schools. In Griffin v. County School Board of Prince Edward County, Virginia 377 U.S. 218 (1964), the county officials were enjoined from paying tuition grants or giving tax exemptions to segregated private schools so long as the county's public schools remained closed 377 U.S. 218 (1964), however, in Poindexter v. Louisiana Financial Commission, aff'd per curiam, 389 U.S. 215 (1968) the state was not allowed to become involved in private discrimination in violation of the equal protection clause of the 14th Amendment.

The purpose and scope of Title VI and its progency of remedial legislation Title IX, Section 504, the Age Discrimination Act, however, is broad; the extreme sanction of fund termination, is purposefully narrow.

As I stated, the thrust of the civil rights laws and implementing regulations has been towards voluntary compliance with the prohibition not to use federal money to discriminate on the basis of race, sex, age, disability, national origin or color.

In Title VI, the enforcement provisions, 42 U.S.C. 2000d-1, allow for agency discretion to refer a case to the Department of Justice or the use of other legal means to seek compliance or in the alternative, to terminate the federal funding.

Termination, however, is only after notice, opportunity to be heard, an express finding on the record of non-compliance and then the termination of funds must be "pinpointed", i.e., limited to federal assistance supporting the discrimination All agency action under this section is subject to judicial review and Congressional oversight.

There have been horror stories of "1984 big brother-type" intrusions attendant passage of this bill. The stories are false. The bill reflects the practices, interpretations and experiences of over 20 years implementing the Constitution, as regards Title VI and the laws of the land as regards Title IX, Section 504 and the Age Discrimination Act.

The federal government, HEW and HUD, for instance, have been sued for failure to enforce the law. Adam v. Richardson, 480 F. 2d 1159 (1973), Clients Council v. Samuel R. Pierce, 711 F. 2d 1406 (1983).

The reports of the U. S. Commission on Civil Rights have, until recently, uniformly documented the inadequate enforcement of the civil rights laws by every administration since its inception in 1957.

Blatant inequality still exist. The Grove City College case only exacerbates the inadequate compliance by the recipients and the government with non-discrimination prohibitions by carving out still more and more areas "not covered" contrary to the intent of Congress.

We ask you to support S. 2568 and restate clearly in this bi-partisan effort that: it is "the unquestioned power of Congress to fix the terms on which federal funds shall be disbursed"; 110 Cong. Rec. 6546 (1964) and the condition precedent of the receipt of federal assistance is non-discrimination on the basis of race, sex, national origin, age, disability or color.

Senator STAFFORD. Thank you very much, Ms. Simmons. I think you can take some comfort in the fact that S. 2568, as we said earlier, has more than 60 cosponsors. Even a mathematician as poor as I am knows that that is more than half of the whole Senate. [Laughter.]

Senator STAFFORD. Mr. Ayers, we would be glad to hear from you.

Mr. AYERS. Mr. Chairman, other committee members, I want to thank you for this opportunity to be here today. My name is Jake Ayers. I am from Glen Allan, MS. I have had a number of years of experience in dealing with school desegregation in Mississippi.

I come from a school district that was desegregated by private attorneys. There are 150 school districts in Mississippi. They never would have found enough attorneys to desegregate all the school districts if it had not been for title VI.

Title VI put the burden of school desegregation and equal opportunity for all children on the Department of Education. HEW was forced to desegregate the schools in Mississippi. Should either one of these titles be weakened in any way, it would allow those States to revert to their old ways of doing things.

The advantages and the opportunities that have been gained through this title VI are too numerous to mention, so I will just talk briefly about my own experience and my own family.

My reason for being involved in education and school desegregation was that I had nine children, eight sons and a daughter. Before title VI, they went to a small school where there were approximately 30 to 40 kids in a class. A school that was supposed to accommodate about 100 kids had more than 300 kids in the building.

Their books were often 4 or 5 years old; they had been used by the white school. Pages were missing and backs were off. If we have gained nothing else with school desegregation and with title VI, we have gained one thing. Our children no longer had to use books that did not have all the pages. They did not have to use books without backs.

They did not have to bother about taking a bag lunch to school if the parent was able to pay for their lunch because when they went to the school that was classified as a white school, they found a facility there to prepare lunches. They found recreational areas; they found physical education. All of the opportunities that whites had taken for granted for all these years had now become available to blacks.

Without title VI, just a few of the districts in Mississippi and other States like Mississippi would have ever had these opportunities afforded to black children. I have noted that in Mississippi we have had the same problems in our universities, in our junior colleges.

We now have a suit against the university and against the junior colleges to afford opportunities to blacks as they afford them to the whites, and to give all children a chance to participate in all the programs that are available in the State, regardless of race.

Title IX, title VI, or whatever the title is, they are all tied together, and to remove one is to endanger the whole civil rights movement as we know it.

Senator STAFFORD. Thank you very much, Mr. Ayers. If Senator Kennedy had been able to stay, he would have noted your long and distinguished record in civil rights litigation and activities in Mississippi.

I am going to place some of the material that he had here with respect to your background in the record at this point.

[The following was received for the record:]

Jake Ayers
Glen Allen, Mississippi

Jake Ayers is a long-time civil rights activist from Glen Allen, MAssissippi. Glen Allen is a rural town 30 miles south of Greenville, Mississippi, which is about 120 miles north of Jackson along the Arkansas border. Mr. Ayers has nine children, 8 boys and one girl.

Mr. Ayers began his civil rights activity volunteering for the Delta Ministry in the early 1960's. In 1965, he worked for the Child Development Group Ministry (CDGM) an organization founded by Head Start.

In 1966, he worked with the School Desegregation Task Force, an organization supported by the NAACP and the Delta Ministry to encourage "free choice," which was the means to get black parents to choose to put their children in integrated schools.

In 1965, Mr. Ayers offered himself as a plaintiff in school desegregation litigator. His school district, the Western Line School District, was integrated by a private lawsuit initiated by the NAACP Inc. Fund pursuant to Title VI and the Brown decision. The NAACP brought less than 300 such actions in Mississippi, a state with more than 3000 school districts. Most of these districts were integrated through the efforts of HEW pursuant to Title VI. Were it not for Title VI, NAACP would have had to sue all 3000 school districts. Through his work with the Desegragation Task Force, Mr. Ayers is acquainted with the districts integrated through HEW efforts.

Mr. Ayers' oldest child was in 6th grade when the schools were integrated in 1966. He has a 12 year old child presently in school.

Mr. Ayers continues to be involved in school desegration litigation. He is a plaintiff in the case of Adams v. Bell (initiated in 1970 under the name of Adams v. Richardson) which was a suit against the Commissioner of Education to force the Commissioner to carry out the requirements of Title VI. This litigation is continuing and may be affected by the Grove decision. He is not aware of the details of the Adams case.

He is also presently involved in a suit against the Mississippi State Junior College system and the Mississippi State University system pursuant to Title VI. In your questions, you will ask him to explain why he chose to sue the state system and not each university or each program or activity. He will say that they knew the whole school system was discriminating. Why look to see if there are blacks in the math department when there are no blacks in the school?

In your questions, you will ask if Mr. Ayers has seen any other difference in his life as a result of the Title VI. He will discuss his experience with the segregated hospitals and health clinics and how integrated waiting rooms are eliminated.

Senator STAFFORD. Again, if members who were not able to be here have questions in writing, would you be willing, both of you, to respond to those questions?

Ms. SIMMONS. Yes.

Mr. AYERS. Yes.

Senator STAFFORD. All right. For both of the committees, we very much appreciate your participation this morning. Thank you.

Mr. AYERS. Thank you.

Ms. SIMMONS. Thank you.

Senator STAFFORD. The Chair would now ask the final panel for this morning—Mr. Gordon Jones of the Heritage Foundation, and Ms. Marilyn Chase, director of community services for the Governor of Massachusetts—if they will come to the witness table.

Mr. Jones, you probably heard me mentioning the 5-minute rule, and you have got the traffic lights which we are all so unpleasantly familiar with in front of you. I am going to reverse the order here, Mr. Jones, and, in the age of chivalry, let Ms. Chase go first.

STATEMENT OF MARILYN ANDERSON-CHASE, DIRECTOR, OFFICE OF COMMUNITY SERVICES, COMMONWEALTH OF MASSACHUSETTS, AND GORDON S. JONES, VICE PRESIDENT, ACADEMIC AND GOVERNMENT RELATIONS, THE HERITAGE FOUNDATION

Ms. ANDERSON-CHASE. It is nice to know that chivalry is not dead. Thank you, Mr. Chairman.

Mr. JONES. Is that not a sexist remark? [Laughter.]

Ms. ANDERSON-CHASE. Mr. Chairman and members of the committee, I am Marilyn Anderson-Chase, director of the Governor's Office of Community Services for the Commonwealth of Massachusetts. I very much appreciate the opportunity to appear before you on behalf of Michael Dukakis, Governor of the Commonwealth.

I am here on behalf of the Dukakis administration to express our strong support for the Civil Rights Act of 1984. We in Massachusetts are concerned that at present there is no Federal law which comprehensively prohibits discrimination in institutions receiving Federal assistance.

The proposed legislation, S. 2568, would complement and enhance State laws to ensure the prohibition of discrimination in educational institutions, a prohibition which the Supreme Court recently weakened.

In February 1984, the Supreme Court decision in *Grove City College* v. *Bell* drastically narrowed the prohibition against sex discrimination in federally assisted education programs under title IX of the Education Act of 1972. By implication, race, age, and handicap protections in title VI of the Civil Rights Act of 1964, the Age Discrimination Act, and title 504 of the Rehabilitation Act may also be affected.

The Federal Government has been the ultimate bulwark upon which civil rights activists have relied for protecting the rights of women, minorities, the aged, and the handicapped. The recent court decision, we feel, creates an uncertainty about the ongoing commitment to access for these populations and requires a clarification and a restatement of congressional intent.

Past effective civil rights laws before *Grove City* enhanced and promoted State law. The Commonwealth of Massachusetts has led this Nation since its birth in protecting the rights and privileges of individuals.

The Massachusetts Constitution of 1780, which has been a model for other States, is based on a belief in freedom and equality for all mankind and in the duty of government to safeguard and foster for its people the enjoyment of these rights.

Our continued commitment to this principle is demonstrated by our strong laws prohibiting discrimination because of race, color, religion, creed, ancestry, national origin, military status, sex, age, and handicap in the areas of employment, education, private and public housing units, commercial property, and public accommodations.

We in Massachusetts believe in and enforce a public policy of equal rights and equal access. This State and others which share this commitment are working extremely hard not only to prohibit specific instances of discrimination, but more importantly to provide and promote an environment free of discrimination, where all citizens are able to go to school, to live, and to work wherever they choose.

In spite of our accomplishments, we recognize that much remains to be done. Many families presently suffer from inadequate income, substandard and overcrowded housing, and inferior education because discrimination and de facto segregation bar them from better jobs, dwellings, and schools.

We recognize that any such effects of any illegal past or present discriminatory practices must be affirmatively remedied. However, the *Grove City* decision and its implications for other statutes undermines our ability to effect such remedy.

If private institutions within the State are allowed to discriminate against women in athletic programs, but not in laboratories, or against minorities in admissions, but not in financial aid, the fabric of our State policy against discrimination will be torn. Our citizens will go without basic civil rights protection.

And if the courts choose to apply the same narrow interpretation to the Civil Rights Act, the Rehabilitation Act, and the Age Discrimination Act, all of the Federal strength the State has relied upon will disintegrate. We simply will not have the resources to support an environment free of discrimination.

Mr. Chairman, I suggest that if the effect of the *Grove City* decision in a State with strong antidiscrimination laws is potentially severe, it is devastating to citizens in a State with weak laws and a weak history on civil rights.

Senator STAFFORD. You have got about 30 seconds.

Ms. ANDERSON-CHASE. In summation, the enormous Federal weight that has, until *Grove City*, been the cornerstone of our State policy must be restored. This is not a case of Federal intrusion into State's rights. Discrimination, especially with the help of Federal financial assistance, is not something to be supported or rejected on a regional basis.

Only the Federal Government has the capacity to enforce these statutes and protect the rights of all its citizens throughout the

country. We believe that this legislation will restore this capacity to the Federal Government.

[The prepared statement of Ms. Anderson-Chase follows:]

TESTIMONY
SUBMITTED BY

MARILYN ANDERSON-CHASE
DIRECTOR
OFFICE OF COMMUNITY SERVICE
COMMONWEALTH OF MASSASHUSETTS

Mr. Chairman, members of the Committee, I am Marilyn Anderson-Chase, Director of the Governor's Office of Community Services for the Commonwealth of Massachusetts. I appreciate the opportunity to appear before you on behalf of the Governor of the Commonwealth. I am here to express the Dukakis Administration's support for the Civil Rights Act of 1984.

We in Massachusetts are concerned that at present there is no federal law which comprehensively prohibits discrimination in institutions receiving federal assistance. The proposed legislation (S-2568) would complement and enhance state laws to ensure the prohibition of discrimination in educational institutions -- a prohibition that the Supreme Court recently weakened.

In February, 1984, the Supreme Court decision in Grove City College vs. Bell drastically narrowed the prohibition against sex discrimination in federally-assisted education programs under Title IX of the Education Act of 1972. By implication, race, age and handicap protection in Title VI of the Civil Rights Act of 1964, the Age Discrimination Act, and Section 504 of the Rehabilitation Act were also affected.

In Grove City, the Supreme Court concluded that the College, although it receives federal financial assistance, cannot be sanctioned under Title IX for discriminating in programs other than the "financial aid program." In effect, the Court severely limited the ability of the federal government to prohibit discrimination as previously established by twenty years of Congressional anti-discrimination policy.

The federal government has been the ultimate bulwark upon which civil rights advocates have relied for protecting the rights of women, minorities, the aged and the handicapped. The recent court decision, we feel, creates an uncertainty about the ongoing commitment to access for these populations and requires a clarification and restatement of Congressional intent.

To underscore the threat to civil rights protection that the Supreme Court decision represents, it is important to recall the history of the fight for civil rights in this country. For years, state and federal laws allowed public funds to be spent on facilities and programs from which women and minorities were expressly excluded. The rights of handicapped and aged persons were more often then not overlooked. Since some states failed to enact strict civil rights legislation on their own,

federal legislation (especially the Civil Rights Act of 1964) became necessary to ensure the protection of the rights of women, minorities, the aged and the handicapped against systematic and pernicious discrimination. This protection was assured by providing that institutions benefiting from federal financial assistance could not at the same time engage in discriminatory conduct.

The result of a broad, and in our view, correct interpretation of Title IX alone underscores the importance of S-2568. Since Title IX was enacted in 1972, the number of women completing post-bachelor studies in professions traditionally male-dominated increased significantly.

In 1981-82, 33 percent of persons receiving law degrees were women - a 400 percent increase;

25 percent of persons receiving medical degrees were women - a 250 percent increase;

15 percent of persons receiving dental degrees were women - a 1500 percent increase.

Past effective civil rights laws, before Grove City, enhanced or promoted complementary state laws. The Commonwealth of Massachusetts has led this nation, since its birth, in protecting the rights and privileges of individuals. The Massachusetts Constitution of 1780, which has been a model for other states, is based on a belief in freedom and equality for all mankind, and in the duty of government to safeguard and foster, for its people, the enjoyment of these rights.

Our continued commitment to the principle of equal rights is demonstrated by our strong laws prohibiting discrimination because of race, color, religion, creed, ancestry, national origin, military status, sex, age, and handicap in the areas of employment, education, private and public housing units, commercial property and public accomodations.

The Massachusetts Commission Against Discrimination handles complaints against discrimination in credit and employment, housing and public accomodations. Since its inception, it has served as a model for similar agencies across the nation. The State Office of Affirmative Action sets affirmative action policy and direction for state agencies and departments. It monitors and enforces compliance with appropriate federal and state

anti-discrimination laws and regulations. The Governor of the Commonwealth has further demonstrated a firm commitment to civil rights by ensuring a work force which is presently 47 percent women and 10 percent minority.

In short, we believe in and enforce a public policy of equal rights and equal access. This state, and others which share this commitment, are working extremely hard not only to prohibit specific instances of discrimination but also, more importantly, to provide and promote an environment free of discrimination where all citizens are able to go to school, live, and work where they choose. However, the Grove City decision and its implication for the other statutes undermines our ability to enforce these rights.

But, in spite of these accomplishments much remains to be done. Many families presently suffer from inadequate income, sub-standard and over-crowded housing and inferior education because discrimination and de facto segregation bar them from the better jobs, dwellings and schools. We recongize that any such effect of any illegal past or present discriminatory practices must be affirmatively remedied.

If private institutions within the state are allowed to discriminate against women in athletic programs but not in laboratories, or against minorities in

admissions but not in financial aid, the fabric of state policy against discrimination will be torn. Our citizens will go without basic civil rights protection. And if the courts choose to apply the same narrow interpretation to the Civil Rights Act, the Rehabilitation Act, and the Age Discrimination Act, all of the federal strength the state has relied on will disintegrate. We simply will not have the resources to support an enviroment free of discrimination.

Mr. Chairman, I suggest that if the effect of the Grove City decision in a state with strong anti-discrimination laws (such as Massachusetts) is severe, it is devastating to citizens in a state with weak laws and a weak history on civil rights.

Critics of S-2568 argue that the enforcement cost of this bill if enacted would be burdensome. We argue that the costs of enforcing the Grove City ruling may supercede those of the proposed legislation. Since the ruling, the U.S. Department of Education has started to close and narrow cases it had previously considered covered by Title IX. In one case in New England, for example, federal civil rights enforcement agencies have already had to prove that federal assistance was tied to specific programs before an investigation into a discrimination

claim could begin. In additional administrative burdens and cost of conducting two investigations to determine (1) if federal funds can be tied to the specific programs and (2) if the program is, in fact, discriminating is enormous. Further, citizens are potentially discouraged from submitting claims of discrimination.

In sum, the enormous federal weight that has, until Grove City, been the cornerstone of our state policy must be restored. Such restoration does not constitute federal intrusion into states' rights. Only the federal government has the capacity to enforce statutes that protect the rights of all its citizens throughout the country. We believe the proposed legislation will restore this capacity to the federal government.

As a state receiving billions of dollars in federal assistance, with hundreds of private institutions that operate under our jurisdiction, we realize that the Grove City decision actually eases the pressure on states to comply with civil rights legislation. Despite this, we believe that we can not and must not back away from our commitment equal opportunity for all segments of the population which reside in this state. We enthusiastically support this legislation.

Mr. Chairman, I would like to add Massachusetts to the long bi-partisan list of supporters of the Civil Rights Act of 1984.

Senator STAFFORD. Thank you very much.

Now, Mr. Jones, you see we have actually given you the last word here.

Mr. JONES. That is probably a sexist remark, too. [Laughter.]

Mr. Chairman, I am very glad to be here to represent the Heritage Foundation. Apparently, I am alone among the witnesses today to raise some questions about the reach and scope of this legislation.

I noted in the headlines in the newspapers this morning that Secretary Bell is either in favor or opposed to this legislation, depending on whether you read the Washington Post or the Washington Times. I think that is an indication of the complexity of the legislation and of the issues being raised by it.

Senator STAFFORD. He must have made a very successful statement if that is the case. [Laughter.]

Mr. JONES. Maybe he is running for office.

In any event, I hope the committee will take the opportunity to call administration witnesses and ascertain what the administration's position is on this legislation.

I would like to note at the beginning that the immediate impact of this legislation will very likely be the exact opposite of what its sponsors intend. To the extent that any number of colleges refuse to accept recipients of Federal grants rather than bring themselves into the scope of this legislation, educational opportunities for some minorities are going to be reduced. I am not sure that that is a result that is intended by the authors or that should be intended by the Congress.

Let me just discuss some of the potential problems with this legislation which I think should be addressed by the subcommittee before S. 2586 is reported to the floor.

It appears from the plain language of S. 2568 that participation in Federal revenue-sharing programs will bring each and every activity of every State under the scope of Federal civil rights laws whether or not those activities and programs are claimed to be discriminatory or not.

Currently, there are many individual programs of State and local government which receive no direct Federal funds, and thus are not subject to the enforcement actions brought into play by this legislation.

The result will inevitably be to erase any distinction between Federal and State action. The States would truly become no more than administrative units of the Federal Government.

Is it the intent of the authors of this bill that discrimination be judged on the basis of intent or effect? That is a very real question and one that is of enormous importance to many people in this country.

As you know, the Supreme Court has ruled that the Constitution bars intentional discrimination and title VI bars intentional discrimination. However, the Court has ruled that regulations promulgated under these authorities may go further and actually bar actions which, however unintentional, result in unequal results with respect to ethnic or minority groups.

It appears to me that this legislation imports into civil rights law the effects test regulations. This has implications not only for con-

servative organizations, but also some organizations which are supporting this legislation now, but who do not realize that it may have effects that they do not anticipate.

For example, an organization such as Jesse Jackson's People United To Help Humanity receives Federal aid, and yet its board of directors, its officers and its program operations are dominated by one racial group. It is conceivable that PUSH would be subject to challenge under the effects test if its actions benefit one group to the exclusion of others.

In the *Bob Jones* case, the Supreme Court upheld the removal of a tax exemption for a religious school on the grounds that there was a clear national policy against racial discrimination. If this legislation passes, the same kind of clear national policy will exist with respect to gender discrimination.

Under those circumstances, it will be strange if the tax exemption of such single-sex schools as Smith College and Virginia Military Institute could survive. I am not sure that that is the intent of the authors of this legislation. If it is not, they should make that clear.

The question of enforcement is a very important one. This legislation sets the scene for chaotic enforcement battles. The Department of Housing and Urban Development has issued regulations based on title VI; so has the Department of Education. Whose regulations will prevail?

In closing, I would like to say just a word about procedure. I have been in Washington long enough to know that this legislation was not brought by a legislative stork. It has all the marks of having been written by a committee. The result is not necessarily the tightest and most unambiguous piece of legislation ever to appear.

If the aim is to write good legislation rather than to demonstrate political muscle, the authors of this bill ought to be honest enough to admit that improvements are possible, this legislation did not come down from Mount Sinai, and that it can conceivably be improved on the floor or in committee.

If the proponents of this bill had intended merely to reverse the Supreme Court's decision in the *Grove City* case, that could have been done very easily through Representative Schneider's bill or Senator Packwood's bill, as originally introduced.

This legislation goes far beyond that and I hope that the committee will take the opportunity to examine all of its ramifications.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Jones follows:]

STATEMENT OF GORDON S. JONES
VICE-PRESIDENT FOR ACADEMIC AND GOVERNMENT RELATIONS
THE HERITAGE FOUNDATION
BEFORE THE SENATE SUBCOMMITTEE ON EDUCATION
ON
S. 2568, THE 1984 CIVIL RIGHTS ACT
24 MAY, 1984

Mr. Chairman, members of the Subcommittee:

My name is Gordon Jones. I am Vice President for Academic and Government Relations for the Heritage Foundation, a private non-profit public policy research organization. While Heirtage takes no position for or against this legislation, the bill before you does raise certain questions which we feel should be explored before it is passed.

To begin with, it appears clear that the first impact of this bill, should it be enacted, would be the exact opposite of what its sponsors desire. The desire is to increase educational opportunities for minorities. Yet there is ample evidence that at least some schools will refuse to admit recipients of federal academic assistance, should this bill pass, and those recipients are disproportionately minorities.

It is particularly unfortunate that that is the case, because some of the schools in question have exemplary records in dealing with minorities. In fact, it is ironic that the schools over which this batle is being fought have never been charged with discriminating. It is too bad that passage of this legislation will make it harder for minorities to attend schools which have a record of treating them well.

Having made that point, I would like to look at some of the other implications of S. 2568 and its companion bill, H.R. 5490. I hasten to say that I cannot address all the implications of the bill, because I simply do not know where it stops. Let me discuss some potential problems with it, areas that I think need to be addressed by this Subcommittee and Committee before S. 2586 is reported to the floor of the Senate.

1. It appears from the plain language of S. 2568 that participation in federal revenue sharing programs will bring each and every activity of the States under the scope of federal civil rights laws. Currently, there are many individual programs of State and local government which receive no direct federal funds and thus are not subject to the enforcement actions brought into play by this legislation. The result will inevitably be to erase any distinction between federal and State action. The States will truly become no more than administrative units of the federal government.

Do the authors of this bill intend its reach to be this broad? If not, the definite limits should be specified in the language of the bill itself.

2. Is it the intent of the authors of this bill that discrimination be judged on the basis of "intent" or "effect"? It makes a very great deal of difference, and many of the fears of those interested in this bill would be allayed if "intent" were the criterion. As you know, the Supreme Court has ruled that the Constitution bars only intentional discrimination, and that Title VI also bars only intentional discrimination. However, the Court has ruled that regulations promulgated unter Title VI may go further, and actually bar actions which, however unintentional, result in unequal treatment of ethnic or minority groups.

It appears to me that this legislation would import the "effects test" regulations

3. It is not only conservative organizations which should be leery of this bill. Its reach is so sweeping that it may well affect organizations now supporting it in ways they do not anticipate. For example, an organization such as Jesse Jackson's People United to Help Humanity (PUSH) receives Federal aid, and yet its board of directors, its officers, and its program operations are dominated by one racial group. Is it possible that PUSH would be subject to challenge because the "effect" of its actions benefits one group to the exclusion of others? I think it is. There are, of course, many other groups in the same situation.

4. In the Bob Jones case, the Supreme Court upheld the removal of a tax exemption for a religious school on the grounds that there

was a clear national policy against racial discrimination. If this legislation passes, the same kind of clear national policy will exist with respect to gender discrimination. Under those circumstances, it would be strange if the tax exemption of such single-sex schools as Smith College and Virginia Military Institute could survive. Is that the intent of the authors? They should make it clear.

5. Who is to enforce this legislation? It seems to me that this legislation sets the scene for chaotic enforcement battles. For example, the Department of Housing and Urban Development has issued regulations based on Title VI. So has the Department of Education. Under this bill, HUD could enforce its regulations against a Head Start program operated in a HUD housing project, while the Department of Education could enforce its version against a HUD student housing project at a university. More likely, both will be trying to enforce their own regulations at the same time.

Did the authors of this bill desire this result? If not, they should specify who is responsible for enforcement.

6. There has been much discussion of the mom and pop grocery store, and whether under this bill the cashing of food stamps would make all stores subject to all civil rights laws. I have

read that the authors of the bill do not intend that result, but frankly, I am not reassured. It is true that so far the courts have not construed the acceptance of food stamps as acceptance of federal aid, but that is the point. The law is being changed here, and no amount of informal statements will tip the balance. If that result is not intended, what is wrong with specifying that in the law itself?

7. What is the cost of this bill? I can not read it without thinking that it provides a vast expansion of civil rights enforcement. Such enforcement is not costless. Which agencies will have their budgets increased, and by how much? It is not acceptable to state that no increase in funds will be necessary. That would be an empty promise where no delivery was intended.

There is virtually no limit to the questions that occur to a careful reader of the bill and the introductory statements. The examples I have given here are only a very few of the posisbilities.

Well, you may say, these questions are interesting, but why should we not bring to bear the full range of civil rights enforcement against institutions, public and private, that discriminate? After all, we do not want people discriminating. If we can use these mechanisms to root out discrimination, why

should we not do so?

There are at least two reasons why we should not use these mechanisms. One is based on the philosophical defense of freedom, even freedom to do bad things, and the question of whether there should be a private sector, outside the reach of government action. I will leave that question aside for the moment, although it is very interesting to me.

The more pragmatic reason lies in the definition of discrimination. Is it discrimination when only 2% of loanable funds go to blacks? It may be, but it may not. Is it discrimination when 50% of white applicants fail bar exams, while 75% of blacks do? Is it discrimination when only 1% of federal farm assistance programs go to Hispanics?

The question I am alluding to here is the difference between an intent to discriminate and an unintended consequence of neutral action. It is, of course, the whole question of affirmative action and quotas.

Americans have amply demonstrated their opposition to institutionalized racism and discrimination. They have just as adamantly demonstrated their opposition to artificial quotas. That opposition is consistent across racial, ethnic, and gender lines. It shows up as concrete opposition to school busing, to

affirmative action admissions and hiring policies, to relaxed standards of competency, and to any of its other manifestations.

To the extent that this legislation increases the possibility for such programs, it will be resisted by most Americans as an unwarranted and dangerous interference with private arrangements. It is not necessary for this legislation to take that step, to accomplish the purposes its sponsors set forth for it.

Finally, Mr. Chairman, I would like to say a word about procedure. I have been in Washington long enough to know that this legislation was not brought by a Legislative Stork. It has all the marks of having been written by a committee. One can envision the representatives from the various groups supporting this bill sitting around and agreeing on language. Each group has an interest, and each group's interest is accommodated in the language.

The result is not necessarily the tightest and most unambiguous piece of legislation ever to appear. Quite frankly, under the circumstances, it is presumptuous to pretend that this language is perfect, and that no amendments to it can be tolerated. If the aim is to write good legislation, rather than to demonstrate political muscle, the authors of this bill ought to be honest enough to admit that improvements are possible, and they ought to

welcome honest attempts to improve the language.

After all, the proponents of this bill maintain that the Supreme Court misread Congressional intent in Title IX, and that the Grove City decision reflects that misreading. That being the case, it is obvious that further misreadings of Congressional intent are possible, unless the Congress spells out exactly what it is trying to do.

This legislation does not meet that test. It is simply not clear what is being attempted here. Is this bill designed only to overturn the program specificity part of Grove City? Then what was wrong with the bill introduced by Representative Claudine Schneider, H.R. 5011? Or the one introduced by Senator Packwood as S. 2363? Those bills confined their effects to the part of the Grove City decision their authors found objectionable. They did no more, and no less. In choosing this language over that of H.R. 5011 and S. 2363, Congress is telling the Court that it wants to go beyond just overturning Grove City.

Nor does this bill only overturn Grove City and bring the four major civil rights statutes into harmony. That could have been done by a fairly simple amendment to the Schneider or Packwood bills.

This legislation goes far beyond that kind of simple action.

In short, Mr. Chairman, it is short-sighted and arrogant to refuse to consider possible amendments to this legislation. There are Senators with honest questions about the reach of this bill. There are groups who need to be reassured that this legislation will not reach them, or that it will reach them in ways that are consistent with the broad guarantees of the U.S. Constitution and the American tradition. Their needs must be addressed, and I urge you to consider this bill openly, writing into law exactly what is being accomplished. To do less is to weaken the committment to civil rights law and to risk the possible disruption of our society.

Senator STAFFORD. Thank you very much, Mr. Jones.

Again, members who are not able to be here from both of the subcommittees may have questions that they are likely to submit to you for answers in writing, if that would be agreeable to you both.

At this point in the record, the Chair intends to place statements from Senator Packwood of Oregon, Senator John East of North Carolina, and Senator Dole of Kansas.

[The statements of Senators Packwood, East, and Dole follow:]

News from Bob Packwood
U.S. Senator for Oregon

FOR IMMEDIATE RELEASE
MAY 24, 1984

CONTACT: ETTA FIELEK
(202) 224-9058

STATEMENT BY SENATOR BOB PACKWOOD, R-OREGON
JOINT SENATE SUBCOMMITTEES HEARING
CIVIL RIGHTS ACT OF 1984

IN THE 1960'S, NICHOLAS GARNET UPROOTED HIS FAMILY FROM OREGON AND MOVED TO CALIFORNIA SO HIS SON, JOHN GARNET, COULD ATTEND A SPECIAL SCHOOL FOR THE BLIND. AFTER YEARS OF HARD STUDY, TODAY JOHN GARNET HOLDS PROUDLY A DOCTOR IN MUSICAL ARTS. HE IS A BRILLIANT PIANIST AND COMPOSER. BUT HE IS CURRENTLY UNEMPLOYED.

DR. JOHN GARNET FILED A SUIT AGAINST HIS FORMER EMPLOYER, THE UNIVERSITY OF CALIFORNIA, ALLEGING DISCRIMINATION ON THE BASIS OF HIS HANDICAP. DR. GARNET ARGUES THAT HE WAS PASSED OVER, TIME AND TIME AGAIN, FOR PROMOTION FROM PART-TIME TO FULL-TIME STATUS.

THE CASE WAS STAYED, PENDING THE GROVE CITY DECISION, BECAUSE THE MUSIC DEPARTMENT -- WHERE DR. GARNET WAS EMPLOYED -- DID NOT DIRECTLY RECEIVE FEDERAL FUNDS. OTHER PROGRAMS IN THE UNIVERSITY, OF COURSE, DID.

THE PROBLEM IS IDENTICAL TO THAT DECIDED UNDER TITLE IX BY THE SUPREME COURT IN THE GROVE CITY COLLEGE V. BELL. THE ISSUE IS ONE OF COVERAGE. THE COURT HELD IN GROVE THAT ONLY THE SPECIFIC PROGRAM RECEIVING FEDERAL FUNDS NEED COMPLY WITH TITLE IX, THE STATUTE FORBIDDING SEX DISCRIMINATION IN EDUCATION. THE REST OF THE INSTITUTION IS FREE TO DISCRIMINATE,

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AND NO LEGAL CHALLENGES TO THOSE PRACTICES WILL BE CONTENANCED.

DR. GARNET BROUGHT A DISCRIMINATION SUIT UNDER SECTION 504 OF THE REHABILITATION ACT OF 1973. BOTH TITLE IX AND SECTION 504 ARE MODELED AFTER TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 THAT PROHIBITS DISCRIMINATION ON THE BASIS OF RACE, RELIGION OR NATIONAL ORIGIN. IF THE SUPREME COURT DECIDED THAT TITLE IX'S COVERAGE IS LIMITED TO PROGRAMS DIRECTLY RECEIVING FUNDS, THEN ONE CAN BET THEY'D INTERPRET SECTION 504 SIMILARLY.

THAT IS THE SOLE PURPOSE OF THE CIVIL RIGHTS ACT OF 1984: TO RESTORE FOUR BASIC CIVIL RIGHTS STATUTES

TO THE INTERPRETATION THEY ENJOYED BEFORE THE GROVE CITY DECISION. THOSE STATUTES ARE:

1. TITLE VI OF THE CIVIL RIGHTS ACT OF 1964
2. TITLE IX OF THE EDUCATION AMENDMENTS OF 1972
3. SECTION 504 OF THE REHABILITATION ACT OF 1973
4. AGE DISCRIMINATION ACT OF 1975

LET ME REITERATE: OUR BILL SIMPLY RETURNS THESE STATUTES TO THE INSTITUTION-WIDE COVERAGE CONGRESS INTENDED WHEN WE PASSED ALL THESE LAWS. THERE IS NO "BROADENING" OR "EXPANSION," AS HAS BEEN WIDELY REPORTED. THERE NEED BE NO NEW REGULATIONS, NO NEW ENFORCEMENT MECHANISMS. SUCH SUGGESTIONS ARE SMOKESCREENS, HISTRIONICS OF CIVIL RIGHTS OPPONENTS. THIS COMMITTEE --

THIS CONGRESS -- THIS COUNTRY -- SHOULD NOT BE FOOLED.

THERE'S BEEN A LOT OF TALK, TOO, ABOUT THE REMEDY OF FUNDS TERMINATION: THAT SOMEHOW PASSAGE OF THE CIVIL RIGHTS ACT OF 1984 WILL MEAN THE SUDDEN, INSTITUTION-WIDE CUTOFF OF FEDERAL FUNDS. THIS IS DEAD WRONG. ALTHOUGH WE ARE, IN FACT, CLARIFYING THE INSTITUTION-WIDE COVERAGE PROVISIONS OF THE STATUTES, THE FUNDS TERMINATION PROVISIONS ARE STILL LIMITED TO THE PROGRAM RECEIVING FUNDS. IF THE FUNDS TERMINATION REMEDY IS EVER USED, ONLY THE FUNDS GOING TO THE PROGRAM WHERE THE DISCRIMINATION OCCURS WILL BE CUT OFF, <u>NOT</u> THE ENTIRE INSTITUTION. THIS LITTLE-USED REMEDY WILL IN NO WAY BE ALTERED BY OUR BILL.

INDEED, THE MOST IMPORTANT RESULT OF OUR BILL WILL ~~BE THE~~ ASSURANCE THAT VICTIMS OF DISCRIMINATION WILL AGAIN BE ABLE TO SEEK INJUNCTIVE AND EQUITABLE RELIEF. PASSAGE OF THE CIVIL RIGHTS ACT OF 1984 WILL NOT ONLY MEAN THAT THE JOHN GARNETS OF THIS COUNTRY ARE PROTECTED FROM DISCRIMINATION, BUT ALSO THAT THEY HAVE A RIGHT TO DO SOMETHING ABOUT IT.

STATEMENT OF SENATOR JOHN P. EAST
COMMITTEE ON LABOR
SUBCOMMITTEE ON EDUCATION, ARTS, AND HUMANITIES

May 24, 1984

Today the Subcommittee on Education, Arts, and Humanities and the Subcommittee on the Handicapped are conducting a hearing on S. 2568, the "Civil Rights Acts of 1984." I have a number of detailed questions about this legislation, but, before I submit them, I would like to make two general comments.

First, the legislative branch of our government has the duty of passing laws that are clear in meaning. No one, however, seems to be quite sure what this bill would do. Will an "intent" or an "effects" standard be applied under the four statutes that S. 2568 is to amend? If a state receives any revenue sharing funds, are all state activities covered? What role will affirmative action or quotas play after passage of S. 2568? Will state teacher competency tests be struck down simply because they have a "disproportionate impact?" How will S. 2568 affect the banking industry or the farming industry?

Some proponents of this bill have suggested that they will not tolerate amendments addressing these issues. They contend that such amendments would only clutter up a simple prohibition of discrimination. We are assured that S. 2568 will simply restore the law to what the members of the 92nd Congress intended when they passed the Education Amendments of 1972. Let me point out that it took twelve years of lawsuits and a Supreme Court decision to unravel the meaning of those supposedly simple

amendments. I hope that this time around we will make our intentions clear, and that we will examine the full implications of S. 2568. I trust that the members of the 104th Congress will not have to sit in these chambers and "restate" the supposedly clear intentions of the 98th Congress.

If our successors have to go through such an ordeal it will be because we have failed in our duty, have passed vague legislation, and have left it to the courts to fill in the details. Although it is our responsibility to consider anticipated problems in the bills we pass, it has become all too common in recent years for us to ignore these problems and leave their resolution to the courts. One of the basic elements of a just law, however, is that those who must obey it can readily understand it -- understand it before they are forced to undergo the ordeal and expense of defending themselves in court.

One of the earliest landmarks in the history of law is the Code of Hammurabi, which is remembered because the Code was posted in public places so that all of the citizens of ancient Babylon could know the law. Before that event, it seems likely that the law consisted only of the transient edicts and opinions of the priests and bureaucrats of the city. Much later, medieval England established the principle that "ignorance of the law excuseth no man," and the United States has incorporated this rule into our own legal system. Let us hope that our successors do not have to plead ignorance as Congress' excuse for lack of clarity in S. 2568.

I am disturbed by what seems to be a principle of collective responsibility, collective guilt, and collective punishment embodied in S. 2568. The essential feature of this bill is that if one office of an institution is not practicing affirmative action with sufficient vigor, then the entire institution, all of its clients or students, and many other institutions connected to it must be punished, regardless of individual responsibility. We appear to be intent on redefining Americans as a collection of social classes rather than as a nation of individuals. Many of us now speak of a thing called "social justice" as if the purpose of justice was to balance the entitlements and debts of social classes rather than the rights and duties of individuals. I fear that we are moving away from a government of the people and toward a rule by ethnic and sexual classes. Such systems are as modern as the social class system of Communist China and older than the feudal castes of the Middle Ages. In each of these societies, a person's status is determined by birth rather than by worth. S. 2568 seems to me to be a dangerous step toward collective justice which attacks the innocent more than the guilty as a means of distributing entitlements among competing castes.

STATEMENT OF SENATOR ROBERT DOLE

MR. CHAIRMAN. I THANK YOU FOR THE OPPORTUNITY TO TESTIFY TODAY. I COMMEND YOU FOR HOLDING SUCH PROMPT HEARINGS ON THIS IMPORTANT LEGISLATION. YOU HAVE A NUMBER OF EXCELLENT WITNESSES HERE WHO WILL TESTIFY TO THE DRAMATIC GAINS WHICH HAVE BEEN MADE UNDER THE FOUR CIVIL RIGHTS LAWS IN QUESTION AND THE COMPELLING NEED FOR A SWIFT CONGRESSIONAL RESPONSE TO THE GROVE CITY DECISION TO ENSURE THAT THESE LAWS WILL HAVE THE BROAD COVERAGE ORIGINALLY INTENDED BY CONGRESS. I WILL NOT TRY TO REPEAT OR EXPAND UPON WHAT THEY WILL TELL YOU. THOSE WHO HAVE PERSONALLY BENEFITTED FROM THESE LAWS AND THOSE WHO HAVE BEEN IN THE FOREFRONT OF ENFORCEMENT EFFORTS ARE IN THE BEST POSITION TO TELL YOU WHY WE NEED FAVORABLE ACTION ON THIS BILL, THIS YEAR. RATHER, MY PRIMARY PURPOSE IN TESTIFYING TODAY IS TO DISCUSS SOME OF THE CONCERNS WHICH HAVE BEEN EXPRESSED ABOUT S. 2568, INCLUDING THOSE RAISED BY ASSISTANT ATTORNEY GENERAL BRAD REYNOLDS IN TESTIMONY RECENTLY PRESENTED IN THE HOUSE. I BELIEVE MR. REYNOLDS' COMMENTS ARE HELPFUL AND DESERVE THOUGHTFUL CONSIDERATION BY THIS COMMITTEE SO THAT A CLEAR AND UNEQUIVOCAL

RECORD CAN BE ESTABLISHED TO ENSURE THAT NO UNINTENDED RAMIFICATIONS WILL RESULT FROM THE BILL'S ENACTMENT. TO THIS END, AS ONE WHO HAS COSPONSORED AND ACTIVELY SUPPORTED THIS LEGISLATION, I WANTED TO SHARE MY OWN THOUGHTS AND PERSPECTIVE ABOUT HOW THIS BILL IS INTENDED TO OPERATE.

FIRST, THE GENERAL CONCERN HAS BEEN EXPRESSED THAT THE BILL COULD RESULT IN A SIGNIFICANT AND UNPRECEDENTED EXPANSION IN COVERAGE UNDER EACH OF THE FOUR CIVIL RIGHTS LAWS IN QUESTION. IN RESPONSE TO THIS CONCERN, I WOULD REPEAT WHAT I SAID ON THE SENATE FLOOR WHEN S. 2568 WAS INTRODUCED. SIMILAR STATEMENTS WERE MADE BY THE BILL'S PRINCIPAL SPONSORS, SENATORS PACKWOOD AND KENNEDY. SPECIFICALLY, THE PURPOSE OF THIS BILL IS TO RESTORE TITLE IX TO THE BROAD COVERAGE THAT MARKED ITS ENFORCEMENT PRIOR TO GROVE CITY, AND TO ENSURE THAT THE INTEGRITY OF PARALLEL FEDERAL STATUTES PROHIBITING RACE, HANDICAP, AND AGE DISCRIMINATION IS PRESERVED. THAT IS, THE INTENT IS NOT TO EXPAND COVERAGE, BUT RATHER TO MAINTAIN THE STATUS QUO ANTE GROVE CITY.

TO THIS END, THE LAWS WOULD BE AMENDED SO THAT THE ANTI-DISCRIMINATION MANDATE IN EACH APPLIES TO A "RECIPIENT" OF FEDERAL

FUNDS, IN LIEU OF THE CURRENT "PROGRAM OR ACTIVITY" LANGUAGE SO NARROWLY CONSTRUED IN GROVE CITY. THE WORD "RECIPIENT" IS A TERM WHICH HAS BEEN USED AND APPLIED FOR MANY YEARS PURSUANT TO AGENCY REGULATIONS IMPLEMENTING THESE FOUR LAWS. MOREOVER, THE DEFINITION OF RECIPIENT CONTAINED IN THE BILL IS PATTERNED AFTER THAT CONTAINED IN THOSE REGULATIONS. THUS, CONGRESS HAS A LONG ENFORCEMENT HISTORY TO LOOK TO IN DETERMINING HOW THE WORD "RECIPIENT," AS DEFINED, WILL BE INTERPRETED. IN ADDITION, THE FACT THAT THE STATUTORY LANGUAGE IS DRAWN FROM EXISTING REGULATIONS SHOULD SEND A STRONG AND CLEAR SIGNAL TO THE COURTS AND FEDERAL AGENCIES THAT NO EXPANSION IN COVERAGE IS INTENDED.

SECOND, THE CONCERN HAS BEEN EXPRESSED THAT THE DEFINITION OF THE WORD "RECIPIENT" CONTAINED IN THE BILL INCORPORATES A SO-CALLED "TRICKLE UP" THEORY SO THAT, FOR INSTANCE, IF A STATE UNIVERSITY RECEIVES FEDERAL FUNDS, ALL OTHER STATE DEPARTMENTS, INSTITUTIONS, AND AGENCIES WOULD BE COVERED. IT IS MY BELIEF THAT SUCH A CONSTRUCTION WOULD BE INCOMPATIBLE WITH BOTH CONGRESSIONAL INTENT AND THE LANGUAGE OF THE PROPOSED LEGISLATION. IF THE UNIVERSITY RECEIVES THE FEDERAL

FUNDS, THE UNIVERSITY IS THE "RECIPIENT." IT'S THAT SIMPLE. THERE IS AN EXCEPTION IN WHICH THE RECEIPT OF FEDERAL FUNDS BY A SUBUNIT COULD RESULT IN COVERAGE OF THE LARGER ENTITY. THIS IS WHERE THE ASSISTANCE TO THE SUBUNIT IN FACT "SUPPORTS" THE LARGER ENTITY. BUT THIS LIMITED EXCEPTION IS NECESSARY TO PRECLUDE THE POSSIBILITY THAT A GOVERNMENTAL UNIT, OR OTHER ENTITY, COULD AVOID THE BROAD COVERAGE INTENDED BY THE BILL THROUGH CHANNELING FEDERAL FUNDS THROUGH ONE OF ITS SUBUNITS.

A THIRD CONCERN IS THAT THE BILL COULD EXPAND AGENCIES' AUTHORITY TO TERMINATE FEDERAL FUNDS WHERE VOLUNTARY COMPLIANCE WITH THE LAW CANNOT BE OBTAINED. AGAIN, MY UNDERSTANDING OF THE AMENDMENTS MADE TO THOSE SECTIONS DEALING WITH FUND TERMINATION IS THAT THEY WOULD NOT EXPAND THE AVAILABILITY OF THIS SELDOM USED ENFORCEMENT TOOL, BUT SIMPLY ENSURE THAT THE TERMINATION AUTHORITY IS NOT NARROWED AS A RESULT OF GROVE CITY.

THE LANGUAGE OF THE AMENDMENT IS DRAWN FROM THE SEMINAL TITLE VI CASE OF TAYLOR COUNTY BOARD OF POLICE INSTRUCTION VS. FINCH DECIDED BY THE 5TH CIRCUIT IN 1969. THE TAYLOR COUNTY CASE HAS BEEN

FOLLOWED, REPEATEDLY, BY BOTH AGENCIES AND THE COURTS IN CONSTRUING THE SCOPE OF THE TERMINATION AUTHORITY. SO THAT, HERE TOO, CONGRESS HAS A LONG HISTORY TO LOOK TO IN DETERMINING HOW THE LANGUAGE OF THE AMENDMENT WILL OPERATE.

A FOURTH CONCERN IS THAT THE DEFINITION OF "RECIPIENT" CONTAINED IN THE BILL COULD RESULT IN COVERAGE OF "ULTIMATE BENEFICIARIES" SUCH AS STUDENTS RECEIVING FEDERAL LOANS OR OLDER AMERICANS RECEIVING SOCIAL SECURITY BENEFITS. SUCH A CONSTRUCTION WOULD SURELY BE IMPLAUSIBLE. THE LEGISLATION IS DESIGNED TO MAKE EXPLICIT THAT EXEMPTION FOR ULTIMATE BENEFICIARIES, HERETOFORE MERELY IMPLICIT IN EACH OF THESE FOUR LAWS, BY EXCLUDING FROM THE DEFINITION OF "RECIPIENT," "INDIVIDUALS OR PERSONS" RECEIVING FEDERAL AID.

A FIFTH CONCERN IS THAT THE BILL COULD RESULT IN COVERAGE OF MA & PA GROCERS WHO TAKE FEDERAL FOOD STAMPS OR LANDLORDS WHOSE TENANTS PAY THE RENT WITH THE SOCIAL SECURITY CHECKS. THIS CONCERN ASSUMES THAT FUNDS PROVIDED TO INDIVIDUALS UNDER SUCH GENERAL ASSISTANCE PROGRAMS ARE "FEDERAL FINANCIAL ASSISTANCE" FOR PURPOSES OF TRIGGERING COVERAGE UNDER THESE ANTIDISCRIMINATION LAWS. BUT, AS I

CITY OPINION WHICH CONSTRUED THE "PROGRAM OR ACTIVITY" LANGUAGE CONTAINED IN TITLE IX SO NARROWLY.

FINALLY, CONCERNS HAVE BEEN EXPRESSED THAT THIS LEGISLATION WOULD INCREASE FEDERAL REGULATORY PAPERWORK REQUIREMENTS, RESULT IN GREATER AGENCY JURISDICTIONAL OVERLAP, AND GENERATE A SIGNIFICANT AMOUNT OF LITIGATION. BUT ALL THESE CONCERNS STEM FROM THE ASSUMPTION THAT THE BILL WOULD RESULT IN AN UNPRECEDENTED EXPANSION OF COVERAGE UNDER THESE CIVIL RIGHTS LAWS. AND AS I HAVE ATTEMPTED TO EXPLAIN IN THE FOREGOING, IT IS MY INTENTION AND UNDERSTANDING THAT THIS IS NOT THE CASE.

THAT CONCLUDES MY TESTIMONY. THANK YOU MR. CHAIRMAN.

Senator STAFFORD. The Chair has no questions.

Senator Nickles, do you have some questions?

Senator NICKLES. Mr. Chairman, I do. I see some of the previous panelists, and I apologize for needing to run earlier. Senator, I compliment you on the way that you ran the hearing; you moved it rather quickly.

I would like to resolve some of the questions in my mind. I think the intent and the objectives of this legislation are commendable, but how far does it go?

I will just ask Ms. Chase a quick question. You work with the Governor of——

Ms. ANDERSON-CHASE. The Commonwealth of Massachusetts, yes; Dukakis.

Senator NICKLES. If you have an institution—say, Harvard—that has athletic programs, how would you define discrimination within those programs? Suppose you find that you have a football team for men and do not have one for women, is that discrimination?

Ms. ANDERSON-CHASE. I think the Commonwealth of Massachusetts is interested in this particular piece of legislation in ensuring that we are reestablishing the original intent of title IX and further ensuring the intent of title VI, et cetera.

In terms of the specific case which you raise, I think we would be very much concerned that there is opportunity for women to participate in football and to have equal access to resources for those kinds of programs if, in fact, it is their desire to do so and to participate in such programs.

I think the concern is not necessarily that the college offer those kinds of programs without interest. But certainly to the extent that women are interested in participating in those kinds of programs, then it is our expressed intent and desire that those kinds of programs be available not only to women, but to other groups who are interested in those kinds of athletics and other kinds of programs.

Senator NICKLES. Would it be discrimination, in your opinion?

To fund a men's basketball team on a greater level than it would be a women's basketball team? And if that should happen, which I expect it is in a lot of schools—then would we extend the jurisdiction of this Act to cover the entire institution?

Ms. ANDERSON-CHASE. In my impression and my understanding, if, in fact, we were found not to be funding programs at levels comparable or at levels sufficient for that activity and, in fact, the administration was refusing to do so, then in my understanding it would be discrimination.

And to the extent that the institution was found to be discriminating and was found to be receiving Federal assistance, then it is our position that those Federal funds might be held in jeopardy.

I think as was argued in the testimony just previous to mine, the instances in which federal funds, in fact, are terminated tend not to be as frequent as might be suggested, but that, in fact, there are often a number of other remedies and actions that go into place before we get to that point.

Senator NICKLES. From your reply, I hear more of an intent than a result. Mr. Jones had discussed the two, but if you went from more of a results-oriented test, which some people say that this legislation does, you could just look at your appropriations.

How much money are we spending in men's athletics versus women's athletics? If you found a considerable amount of difference, then would you say that that would be discrimination?

Ms. ANDERSON-CHASE. Yes.

Senator NICKLES. OK. If we take that a step further, would your Governor be shocked if we reviewed the institutions of higher education in Massachusetts and found discrimination—let us just say that that is the case, and I expect that it probably would be. Then would you eliminate all Federal aid to institutions of higher education in Massachusetts?

Ms. ANDERSON-CHASE. I think I may have been inappropriate in saying yes. I think, again, we would be very much interested in the extent to which the institution was working to correct that situation.

Senator NICKLES. You just went back from an effects test to an intent test. I am not trying to put you on the spot. I just think that some of these questions need to be resolved. I will ask some of our previous panelists later. I apologize again, Mr. Chairman, that I was not able to——

Senator STAFFORD. Well, the Chair would say that we have reserved the right to submit questions in writing, Senator, and if you want to do that, I am sure that the witnesses who have preceded this panel will be glad to respond.

Senator NICKLES. Well, it is my intention to do so. This is important legislation and many feel that it goes much broader than just restoring it back to pre-*Grove City.* If that is the case, I think we need to know it. And then if we decide in its favor, that is fine. I just think that we should know exactly what we are doing.

Mr. Jones, did you——

Mr. JONES. If I could just comment on the question you raised, if you substitute the University of Massachusetts for Harvard there, you would definitely have a State involvement. It is conceivable that not only would aid be cut off to other educational programs, but that aid could even be cut off—revenue-sharing and all aid to the State as a whole.

The language is extraordinarily broad. It talks about assignees, successors, heirs and assigns, I guess, under the fourth generation. It is very, very broad language without much in the way of exception in it.

I do not think too many people would object, if you found discrimination in the athletic program, if aid were cut off to the institution, to the entire university—that specific university, maybe even that specific campus. That is, in fact, what Mrs. Schneider's bill in the House, H.R. 5011, did, and Senator Packwood's bill, S. 2363. That is what those bills did.

By rejecting that approach and substituting the language that is in this bill, the Congress is saying to the courts, we intended to go much farther than that, and I think that is the danger.

If I were a judge trying to interpret what the intent of Congress was, I would look at this and I would say, look, if Congress wanted to overturn *Grove City,* they could have done it; they had a bill before them that would have done that. They rejected that bill. They took this bill. Obviously, they intended to go much farther

than simply reversing *Grove City,* and that, I think, is the danger of this legislation.

Senator NICKLES. Well, let us take one of these examples a step further. We find that the results of this test show that the University of Massachusetts has been discriminating because they put three times as much money into their men's basketball program as they did into their women's basketball program.

Who would resolve that? Who would make that determination?

Mr. JONES. I think the Department of Education has fairly well-developed procedures under title IX for determining when the discrimination exists. I understand that the Congress is not attempting to rewrite those regulations; I do not know that they are being challenged by anyone.

Senator NICKLES. Assuming the determination was made that there had been some discrimination, again maybe taking the example that I used, how far would this legislation go?

You said it would not just apply to funds going to the institution. How far would it's application extend?

Mr. JONES. I do not think that the legislation limits how far it could be applied. It could be extended to every activity of the entity, which is not defined. It may be the college itself or it may be the state of which the college is an entity or is an agent.

If that is so—and I see nothing in the legislation to indicate that it is not so—minimum competency tests operated by the school board in Woburn, MA, would come under this purview. Probably the bar examination given to law school graduates would be examined to see whether it admits blacks and whites in disproportionate numbers and could be subject to challenge.

The tests given to prospective policemen and firemen would be subject to scrutiny of this kind. I see no limits to it. If Congress does intend there to be a limit, then I think it ought to say so.

Ms. ANDERSON-CHASE. That may be one point on which we might agree. I think it is our interest and our concern that the original intent of Congress in establishing title IX be reaffirmed and re-established, and that is that the institution itself might be in jeopardy of losing or having taxed Federal funds which have been directed to its attention.

I think some of the criticisms which have been raised which speak to the potentially broad and far-reaching implications of this legislation may, in fact, be interpretations. And I think, in fact, the legislation may have to be narrowed so that it is not left to that kind of broad criticism and interpretation, but, in fact, that the original intent of Congress is established.

Senator NICKLES. I do not disagree with what you said in any way, shape, or form. If it is as broad as Mr. Jones indicates, it is his impression that it is we could pass the legislation, this year. You could find 2 or 3 years from now, the governors and the States and a lot of various entities saying, wait a minute; we did not expect to lose all of our Federal funds because some school spent more money in athletics in one portion than the other.

That is the reason I brought the question up. I will submit additional questions, Mr. Chairman, and I appreciate your indulgence.

Senator STAFFORD. All right. Thank you very much, Senator Nickles.

[The following material was received for the record.]

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THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE DEPARTMENT
STATE HOUSE • BOSTON 02133

MICHAEL S. DUKAKIS
GOVERNOR

June 19, 1984

Senator James Stafford, Chairman
Senate Committee on Labor and Human Resources
United States Senate
Washington, D.C. 20510

Dear Senator Stafford:

I would like to request that this letter be inserted for the record as a clarification of Massachusetts' position on the question of amendments to S. 2568, the Civil Rights Act of 1984. I was fortunate to have the opportunity to testify before the Subcommittees on Education, Art and Humanities and Handicapped Affairs on May 24, 1984 in support of this legislation.

As stated in my testimony, Massachusetts firmly supports this legislation in its current form. This bill restores Title IX and by implication three other civil rights statutes to the original intent of Congress.

The point that I feel needs to be clarified is that, in agreeing to the question that there seems to be confusion over the scope of this legislation, I may have inadvertently implied that the bill needed to be amended to reduce the scope. Our concern is that the original intent of Congress, borne out by twenty years of enforcement and the development of hundreds of regulations, be restored. The definition of "recipient" used in this bill is based on existing Department of Education regulations which have operated to eliminate discrimination in federally aided programs smoothly and reasonably. This bill is no broader than current law or regulations as we read it and will not create new issues of compliance or enforcement for the states. It is the Commonwealth's understanding that this is the intent of Congress and this is what we strongly support.

It is clear that confusion exists as the Administration and others feel this bill vastly extends the four statues affected. This confusion needs to be cleared up by explanation rather than amendment.

Thank you for the opportunity to address this point.

Sincerely,

Marilyn Anderson Chase

Marilyn Anderson-Chase
Director,
Office of Community
Service

cc: Senator Kennedy
Mr. Powell

NATIONAL WOMEN'S LAW CENTER
1751 N STREET, N.W.
WASHINGTON, D. C. 20036

TELEPHONE
(202) 872-0670

NANCY DUFF CAMPBELL
MARCIA D. GREENBERGER
MARGARET A. KOHN
DIANN Y. RUST-TIERNEY
SHIRLEY J. WILCHER*
ATTORNEYS AT LAW

ANN F. KOLKER
POLICY ANALYST

SALLY F. GOLDFARB+
LEGAL FELLOW

JANE K. BEARD
DEVELOPMENT SPECIALIST

*ADMITTED ONLY IN N.Y.
+ADMITTED ONLY IN WISCONSIN

June 18, 1984

Senator Robert T. Stafford
Subcommittee on Education, Arts
and Humanities
SD-428 Dirksen Senate Office Building
Washington, D.C. 20510

Re: S. 2568

Dear Senator Stafford:

Enclosed are the answers to the questions submitted by Senators Nickles and East.

Sincerely yours,

Marcia D. Greenberger

Enclosure

ANSWERS OF MARCIA D. GREENBERGER
TO QUESTIONS ON S. 2568 BY SENATOR DON NICKLES

Question 1

Under this bill, would a school/university (which receives federal funds) be required to put equal amounts of money into the women's basketball team as the men's basketball team?

Answer

No. Title IX does not require equal expenditures of funds for men's and women's basketball teams under current regulations. This bill would not change those regulations. Pursuant to the regulations, overall comparability of the men's and women's intercollegiate athletic programs is required, not the same fund expenditures for parallel male and female teams in the same sport.

Question 2

What if the school puts money into the men's football team and there are women on campus who want their own team, would the school be required to establish and equally fund a women's football team?

Answer

Under current regulations, schools must accommodate the interests and abilities of male and female students to the same degree. Simply because there is a men's football team, however, does not necessarily mean that there must be a female football team, and certainly not that the funding must be the same even were such a female team established. (See answer 1 above) The measure of comparability overall, not team by team, is key.

Question 3

Would funds be cut off under this bill if the school does not "comply" with this mandate?

Answer

The mandates implied by questions one and two do not exist. To the extent there are violations of the actual Title IX mandates with regard to athletics, the government can either refer the case to the Department of Justice, for a court case in which fund termination would not be expected to be at issue, or pursue agency enforcement in which case the only funds that could be terminated would be those which support the discrimination.

ANSWERS OF MARCIA D. GREENBERGER
TO QUESTIONS ON S. 2658 BY SENATOR JOHN P. EAST

Question 1

Will an "intent" or an "effects" standard be used to determine violations of the four statutes that S. 2568 will amend?

Answer

The same standard will be used to determine violations of the four statutes under S. 2568 as is in place now. That standard was articulated by the Supreme Court for Title VI in Guardians Association v.Civil Service Commission.

Question 2

Can these statutes be used to prevent or restrict use of tests or examinations such as the Georgia Regent's Exam solely because of their "disproportionate racial impact?"

Answer

I am not familiar with the Georgia Regent's Exam. However, assuming it is covered under Title VI at all, since S. 2568 does not change the analysis for determining under Title VI whether a test violates the statute or does not, the application of Title VI to the Exam would not change under S. 2568.

Question 3

Will agency enforcement policies for S. 2568 be uniform and consistent across the country? Is there assurance of procedural due process in the course of an investigation?

Answer

S. 2568 does not address the issue of enforcement policies. The current statutory and regulatory provisions addressing enforcement policies and extensive due process procedures remain in place.

Question 4

What are the implications of S. 2568 for states benefitting from revenue sharing? If a state receives any federal revenue sharing funds, will all state activities be covered?

Answer

In fact, there is a separate statute prohibiting discrimination in the use of revenue sharing funds. That law remains in place and is unaffected by S. 2568.

Question 5

Under S. 2568, if a Federal agency extends assistance to a state university system, would all other state departments and agencies, whether they receive federal funds or not, be subject to federal regulations pertaining to age, sex, race, color and handicap?

Answer

No.

Question 6

Under S. 2568, if a town police department received federal funds, would the local polling places have to comply with federal building regulations promulgated for the benefit of handicapped persons?

Answer

No.

Question 7

If a private, non-university affiliated hospital received any federal funds, would its internship programs be subject to federal regulation under Title IX which currently covers any "education program receiving federal assistance?"

Answer

Yes. Internship programs are educational

Question 8

Would universities that receive federal assistance be required to comply with Federal arcitectural requirements on pain of loss of Federal funds that might be construed as supporting the noncompliance?

Answer

Universities receiving federal funds must comply with the requirements of Section 504 -- no more and no less.

Question 9

What role will affirmative action and quotas play in enforcing S. 2568?

Answer

S. 2568 does not address the issue of affirmative action and quotas and makes no change in current law.

Question 10

The United States Government guarantees various loans to farmers, homeowners, students, etc. The interest rates on these loans are subsidized or otherwise maintained at rates lower than those of the market. Do these subsidized loans constitute federal financial assistance under S. 2568?

Answer

The definition of federal financial assistance is not changed by S. 2568. The legislative history of each of the statutes contains lists of federal funding provisions which would trigger coverage.

Question 11

How will S. 2568 affect our federally insured banking industry?

Answer

Coverage of the banking industry is not changed by S. 2568. Its coverage depends on the type of federal financial assistance received by banks.

Question 12

How will S. 2568 affect the farming industry, supported as it is with government loans, price supports and federal incentive programs like PIC?

Answer

Same as answer 11.

Question 13

Would S. 2568 apply to a grocery store that accepts food stamps from its customers?

Answer

Same as answer 10. The Department of Agriculture regulations address this issue, and would remain unchanged.

Question 14

Would S. 2568 apply to a business housed in a facility financed by the use of tax-exempt bonds?

Answer

Same as answer 10.

Question 15

The Medicaid program has a cap on the number of days an individual can be in the hospital. Does this restriction violate Section 504? Under what conditions might a hospital lose Medicare or Medicaid funding if it discriminates against an individual on the basis of race, age, or handicap?

Answer

The definition of discrimination is not affected by S. 2568. The compliance requirements for each of the four laws are detailed in current regulations which would remain unchanged.

Question 16

How would a case arise under S. 2568? Could any lawyer file a complaint of discrimination and initiate a review or investigation by a federal agency?

Answer

The process for initiation of cases under Title VI, Title IX, Section 504 and the Age Discrimination Act remain unchanged. Agencies have promulgated regulations establishing criteria for filing complaints. Those procedures will remain in place afer S. 2568 is passed.

Question 17

Under what conditions would the people responsible for enforcing any regulation promulgated by S. 2568 be personally subject to suit for their actions?

Answer

Personal liability is established under current statutes pursuant to long-standing judicial principles which would not be changed by S. 2568.

Senator STAFFORD. We thank both of you for your appearance here this morning. It is not every day that a Senator gets to adjourn two subcommittees at once, but I am going to do it right now.

[Whereupon, at 11:50 a.m., the subcommittees were adjourned.]

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